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37863

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

ANDREW J. J. WOLF,
PETITIONER-APPELLANT,

VS.

STATE OF IDAHO,
RESPONDENT.

*Appealed from the District Court of the Fourth Judicial
District of the State of Idaho, in and for ADA County*

Hon CHERI C. COPSEY, *District Judge*

DENNIS A. BENJAMIN

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1 The Court finds that in several instances, Wolf's factual allegations are plainly not supported
2 by the record. For example, the court files in which search warrants are kept clearly disproves
3 Wolf's claims that no search warrant was issued. *See* Exhibit A. The Court further notes that in
4 Exhibit I, attached to Wolf's Second Affidavit filed on June 2, 2010, he writes to his former counsel,
5 Mike Lojek, and accurately describes the executed search warrant, including the day and time it was
6 issued by Judge Swain. Therefore, contrary to his contention that there was no search warrant and
7 that his counsel should have moved to suppress any evidence seized, clearly Wolf is aware that a
8 search warrant was issued and returned. His speculation about its alleged "mysterious"
9 disappearance and reappearance is irrelevant. In addition, in an earlier letter, Exhibit H, attached to
10 Wolf's Second Affidavit, he writes that when his "investigator", Chris Maxson, returned to the Court
11 Clerk's office after March 23, 2010, he learned a search warrant existed even though that same
12 "investigator" testified under oath in his Affidavit attached as Exhibit D that he had not obtained a
13 copy of the search warrant on February 5 and 10, 2010, but failed to state that he returned later and
14 found there was one.

15 For the purposes of this analysis, the Court notes that Wolf's Amended Petition is rife with
16 conclusory allegations which he alleges are supported by his three Affidavits. In addition, the
17 original Affidavit is twenty-four pages long and consists of a rambling description of what he
18 contends happened. The Second Affidavit is thirty pages long with two-hundred seventy two pages
19 of attachments. The Third Affidavit is three pages long with five pages of attachments. The Court
20 carefully reviewed these Affidavits and to the best of its abilities has presumed what supports each
21 claim.

22 To justify an evidentiary hearing in a post-conviction relief proceeding:

23 . . . it is incumbent upon the applicant to tender a factual showing based upon
24 evidence that would be admissible at the hearing. [An] application must be supported
25 by written statements from witnesses who are able to give testimony themselves as to
26 facts within their knowledge, or must be based upon otherwise verifiable information.

Hall v. State, 126 Idaho 449, 452-453, 885 P.2d 1165, 1168 - 1169 (Ct. App. 1994) (quoting
Drapeau v. State, 103 Idaho 612, 617, 651 P.2d 546, 551 (Ct. App. 1982). In this case, other than his

own Affidavits, Wolf provided no written statements from any witnesses¹⁹ who would be able to give testimony themselves as to facts within their knowledge, or based upon otherwise verifiable information. Therefore, unless the evidence presented in Wolf's Affidavits justifies an evidentiary hearing or creates a material factual dispute, no evidentiary hearing is necessary.

Finally, to the extent that Wolf attempts to amend the claims he made in Amended Petition, through the two new Affidavits and argument, the Court will not consider the new allegations. For example, he now challenges the psychosexual evaluation itself and claims his counsel was ineffective for failing to challenge the psychosexual evaluation. He did not raise this claim in his Amended Petition. The Court will not consider it now.

Wolf also now claims that there was no search warrant in Case No. CR-FE-2007-1438 and, thus, his attorney should have moved to suppress the evidence in that case because the search was allegedly illegal. However, this is a new claim that will not be considered and is not supported by the actual facts.²⁰

He also now alleges that the whole office of the Ada County Public Defender's Office and Idaho's Public Defender system is ineffective and violates Idaho law. However, again this was not raised in the Amended Petition and in any event is not relevant to whether he actually received proper representation.

Likewise, he now claims this Court was prejudiced. This was not a claim in the Amended Petition and has been addressed in the Order Denying the Motion to Disqualify.

Wolf also claims the whole public defender office falls below an objective standard of representation because it does not have enough investigators. This was not a claim in the Amended Petition and will not be considered.

In the Amended Petition Wolf claimed that there was no order giving the pre-sentence investigator access to the earlier pre-sentence reports and that his counsel was ineffective for failing

¹⁹ Chris Maxson cannot testify from personal knowledge about any of the relevant facts material to the Amended Petition. In addition, Maxson is not a qualified expert upon whose opinion this Court will rely. As an investigator, he is not qualified to opine as to any of the ineffective counsel claims. He is not an attorney and has no relevant experience. Furthermore, Maxson offers no admissible evidence on any claim made in the Amended Petition.

²⁰ As stated above, there in fact was a search warrant and an affidavit of probable cause. See Ex. A. There is no basis for this new claim.

1 to challenge the Court's consideration of the earlier pre-sentence reports. Now that he knows that in
2 fact an order was entered, that claim has morphed into his attorney was ineffective for failing to
3 investigate how the pre-sentence investigator had a copy of the pre-sentence report. The Court will
not consider a new claim not asserted in the Amended Petition.

4 In addition, now Wolf claims his attorney was ineffective for failing to find any alleged
5 updated pre-sentence reports. He does not explain how those documents, if they exist, would have
6 affected his case. This was not claimed in the Amended Petition and will not be considered.

7 Finally, Wolf now claims he was deprived of "necessary services to conduct a proper
8 investigation." This is likewise a new claim and will not be considered.

9 Wolf is attempting to create a moving target. The Court will not consider newly minted
claims.

10 **I. WOLF PLED GUILTY FREELY AND VOLUNTARILY.**

11 Essential to several of his claims is whether he pled guilty freely, intelligently and
12 voluntarily. His claim that he did not has two bases: (1) he was diagnosed with syphilis subsequent
to his sentencing, and (2) he alleged *Brady* violations by the State. The Court disagrees.

13 **A. The record clearly establishes that his plea was voluntary, intelligent and**
14 **knowing.**

15 In this particular case, the record belies his assertions. The Court is not required to accept a
16 petitioner's claims as true where the record clearly demonstrates the facts as otherwise. *Roman*, 125
17 Idaho at 647, 873 P.2d at 901; *Baruth*, 110 Idaho at 159, 715 P.2d at 372. Wolf claims his plea to
18 the Amended Information was not knowing, intelligent or voluntary because subsequent to his
19 sentencing he learned he had syphilis. He is simply wrong. For the purpose of considering this
20 post-conviction petition, the Court assumes Wolf in fact has syphilis and that he had syphilis at the
21 time he pled guilty even though he has no evidence other than inference that he indeed had syphilis
22 at the time he entered his plea. However, the mere fact he has syphilis does not establish that he was
23 incompetent to enter a knowing and intelligent guilty plea. Other than his conclusory statements, he
24 has introduced no evidence or affidavits from any expert in support of his claim that this bacterial
25 infection caused him to be incompetent or incapable of making a knowing, intelligent or voluntary
plea at the time he entered his plea. The only relevant time frame is the time he actually entered his
plea.

Moreover, the record itself as set forth above establishes that his plea was made intelligently and in compliance with due process. A plea of guilty is intelligently made where the defendant receives real notice of the true nature of the charges against him. *See e.g., Bates v. State*, 106 Idaho 395, 679 P.2d 672 (Ct. App. 1984). He does not claim otherwise. Likewise, the record in the criminal case, as described above in detail, clearly demonstrates that on December 12, 2007, Wolf responded to careful and probing questioning by the Court both *in writing* and *orally* under oath. He admitted to the elements of both crimes. The Court finds Wolf specifically testified he was pleading guilty voluntarily, that he was satisfied with his attorney, and that he understood the Court was not bound by the plea agreement. In addition, at the sentencing, because he appeared to claim to the pre-sentence investigator and to the psychosexual evaluator that he had not committed the crimes (even though the evidence is overwhelming), the Court carefully inquired of him and he clearly and unequivocally admitted he had committed both crimes. The Court gave him the opportunity to withdraw his plea and he did not. Moreover, the Court asked his counsel whether he had any reason to doubt Wolf's competency.

Finally, as part of his psychosexual evaluation, the evaluator found he had no Axis I mental health disorder other than a Sexual Disorder. Instead, the Ph.D clinical psychologist diagnosed Wolf with Antisocial Personality Disorder. A psychological evaluation is specifically designed to identify any organic problems that a person might have, including dementia caused by end stage or late stage syphilis. There is no evidence that Wolf presently suffers from end stage syphilis or that he suffered from it at the time he pled guilty. In fact, Wolf now claims that he never asserted that he suffers from end stage syphilis. End stage syphilis is the only stage at which dementia is found. In fact, according to Wolf's own exhibit, Exhibit L, attached to his Second Affidavit, any brain damage occurs in end or late stage syphilis.

The Ph.D clinical psychologist who evaluated him gave him a battery of tests designed to test his mental capacity, including a Mental Status Examination, Clinical Interview, Shipley Institute of Living Scale, and he found that Wolf "did not have any problems comprehending test instructions or questions, and maintained adequate levels of attention and concentration." The evaluator opined that Wolf's affect was appropriate and normally responsive, his mood consistent, and his thought content rational, linear and goal directed. He found no indication of delusions or hallucinations. He found

1 Wolf was oriented to time, place, person and situation. Wolf's attention, concentration, and memory
2 were all within normal limits and the evaluator found that Wolf was functioning with an above
3 average intellect and abstract ability. Wolf had no unusual motor activity.²¹ When questioned, Wolf
4 denied problems with memory, concentration, delusions, being forgetful or being easily distracted.
5 The evaluator opined that his profile was similar to individuals who have high average verbal skills,
6 average abstraction skills and overall average intellect. Therefore, the evidence as it existed at the
7 time he entered his plea was clear; he was competent. He was having no problems with memory or
8 thought. In fact, even the material Wolf has filed in the post-conviction case demonstrates that there
9 is no evidence he is currently unable to think straight. The period of time during which he entered
10 his plea is the only relevant time frame for the purpose of determining his competency.

11 Moreover, while Wolf refers to earlier psychological evaluations as demonstrating that he
12 was incompetent at the time he entered his plea, he fails to identify what information or opinions
13 contained in those earlier evaluations support this latest contention. His Second Affidavit implies
14 that he had not been given access to these evaluations previously. However, the Court notes that he
15 indeed reviewed these same documents when he read the pre-sentence report before sentencing.
16 They were included in the pre-sentence report. In addition, having now reviewed them again, the
17 Court finds them remarkably similar. All diagnosed him with a personality disorder and Dr. Emery
18 opined that he would continue to pose a significant risk to society.

19 Other than his conclusory statements there is no evidence he was impaired at the time of the
20 plea and the record clearly establishes his plea was knowing, voluntary and intelligent. Thus, the
21 Court finds this claim is not grounds for relief; it is frivolous.

22 ²¹ End stage syphilis is noteworthy for its physical manifestations. "Signs and symptoms of the late stage of syphilis
23 include difficulty coordinating muscle movements, paralysis, numbness, gradual blindness, and dementia." See
24 <http://www.cdc.gov/std/syphilis/>

1 **B. The failure to deliver a gay.com user agreement as part of discovery or a copy of**
2 **the search warrant²² and probable cause affidavit did not render Wolf's guilty**
3 **plea involuntary.**

4 Wolf's next argument concerns allegations that the State withheld or destroyed potentially
5 exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Although he does not
6 identify the *Brady* violations in his Amended Petition, a careful reading of his Affidavits indicate
7 that Wolf is asserting that his pleas were rendered involuntary on the grounds that the prosecution's
8 nondisclosure of what he claims is exculpatory information rendered his guilty pleas unintelligent.

9 There are two categories of information and documents he claims were exculpatory and
10 should have been provided in discovery. First, he complains that the State failed to provide him or
11 his attorney copies of the search warrant executed on August 20, 2007, and a copy of the Affidavit of
12 Probable Cause. He provides no affidavit from his trial counsel that in fact copies of the search
13 warrant and probable cause affidavit were not provided to his trial counsel. Other than his
14 unsubstantiated claims, there is no evidence that his trial counsel did not have these documents.

15 However, for the purpose of the Court's analysis the Court assumed the State failed to
16 provide these documents. However, Wolf fails to describe how either document would have been
17 exculpatory, favorable to him or relevant. Because Wolf has failed to show the exculpatory nature of
18 the documents allegedly concealed by the prosecutor, he cannot establish a right to its disclosure
19 before pleading guilty. The Court finds Wolf cannot succeed on his claims that withholding the
20 documents violated due process or invalidated his guilty pleas.

21 Second, he complains the State failed to provide evidence that consisted of a gay.com
22 website user agreement. Wolf again fails to describe how this evidence would have been
23 exculpatory or relevant. With regard to the gay.com website information, he claims that because the
24 user agreement requires users to be over eighteen years of age that goes to his intent. However, he
25 does not explain how that would have changed the chat room transcripts of his interaction with what
26 he thought was a fifteen year old boy or the fact that he admitted to law enforcement he thought he

23 ²² Now Wolf attempts to claim that there was no search warrant and, therefore, his counsel was ineffective for failing to
24 move to suppress any evidence in Case No. CR-FE-2007-1438 (formerly Case No. H0701438). However, this was not
25 claimed in his Amended Petition and, therefore, will not be considered because Wolf did not move for leave of court to
26 file another Amended Petition. Second, as stated above, the evidence is that in fact a search warrant was issued and,
therefore, his attorney could not be ineffective for failing to move to suppress. *See Ex. A.*

1 was meeting a fifteen year old boy and had been chatting with one. Furthermore, there is no
2 evidence that the State ever had this piece of evidence in its possession and clearly as a subscriber
3 the evidence was just as available to Wolf. The Court finds the user agreement is not exculpatory.

4 The *Brady* decision only addressed the prosecutor's duty to divulge exculpatory material in
5 his possession; the State cannot be required to divulge what it did not possess. There is no evidence
6 the State ever possessed information about the gay.com website and *Brady* did not command
7 prosecutors to affirmatively search for exculpatory material of which they were not aware. However,
8 for the purpose of the Court's analysis, the Court assumes, without evidence, that the State had the
9 gay.com user agreement and failed to provide it to Wolf's defense.

10 Wolf relies upon *Brady* for the proposition that suppression by the prosecution of evidence
11 favorable to an accused violates due process, where disclosure of the evidence has been requested
12 and the evidence is material either to guilt or to punishment-irrespective of the good faith or bad faith
13 of the prosecution. *See also State v. Harwood*, 94 Idaho 615, 495 P.2d 160 (1972); I.C.R. 16. Under
14 *Brady*, a prosecutor breaches this duty and violates the defendant's constitutional rights where the
15 prosecutor fails to disclose evidence that is both favorable to the defendant and material to the
16 defendant's case. *U.S. v. Bagley*, 473 U.S. 667 (1985); *U.S. v. Agurs*, 427 U.S. 97 (1976); *State v.*
17 *Horn*, 101 Idaho 192, 610 P.2d 551 (1980). Due process interests also impose upon the government
18 a duty to preserve exculpatory evidence for potential use by the defendant. *Arizona v. Youngblood*,
19 488 U.S. 51, 55 (1988); *California v. Trombetta*, 467 U.S. 479 (1984); *State v. Fain*, 116 Idaho 82,
20 91, 774 P.2d 252, 261 (1989), *cert. den.*, 493 U.S. 917 (1989); *State v. Bruno*, 119 Idaho 199, 202,
21 804 P.2d 928, 931 (Ct. App. 1990). Evidence "favorable" to the defendant includes evidence which,
22 if disclosed and used effectively, may make the difference between conviction and acquittal. *Bagley*,
23 473 U.S. at 676; *State v. Avelar*, 124 Idaho 317, 859 P.2d 353 (Ct. App. 1993).

24 However, "[t]he United States Constitution does not require the State to disclose material
25 impeachment information prior to entering a plea agreement with the defendant." *Dunlap v. State*,
26 141 Idaho 50, 64, 106 P.3d 376, 390 (2004)(citing *United States v. Ruiz*, 536 U.S. 622, 629, 633
(2002)); *see also Heartfelt v. State*, 125 Idaho 424, 426-428, 871 P.2d 841, 843-845 (Ct. App. 1994)
(information that is not exculpatory need not be disclosed prior to guilty plea). On a *Brady* challenge
to a guilty plea, the test of materiality (*i.e.*, prejudice) is whether there is a reasonable probability

1 that, but for the state's failure to produce the information, the defendant would not have entered the
2 plea but instead would have insisted on going to trial. *Roeder v. State*, 144 Idaho 415, 418-419, 162
3 P.3d 794, 797-798 (Ct. App. 2007) (citing *State v. Gardner*, 126 Idaho 428, 436, 885 P.2d 1144,
11452 (Ct.App.1994).

4 In its analysis, the Court employs an objective assessment, based in part on the
5 persuasiveness of the withheld information, as to whether the particular defendant and his counsel
6 would have insisted on going to trial. *Id.* (citing *Gardner*, 126 Idaho at 436, 885 P.2d at 1152). The
7 inquiry is similar to the prejudice analysis in an ineffective assistance of counsel claim where the
8 defendant's chances of success at trial -- in the absence of counsel's errors — "is a *factor* a court may
9 use when determining the plausibility of the defendant's claim that those errors played a significant
10 role in the decision to plead guilty." *Id.*; see also, *McKeeth v. State*, 140 Idaho 847, 852, 103 P.3d
460, 465 (2004) (emphasis in original); *Gardner*, 126 Idaho at 436 n. 9, 885 P.2d at 1152 n. 9.²³

11 The Court finds that to the extent any of these documents or information would have been
12 exculpatory (it is not) or favorable to him (it is not), a reasonable defendant in Wolf's position, after
13 obtaining the allegedly withheld information, would not be convinced that an acquittal (or a
14 conviction for a lesser offense) was a realistic possibility. *Roeder*, 144 Idaho at 418-419, 162 P.3d at
15 797-798. Further, the benefits derived by Wolf from the guilty plea in which the State agreed to not
16 charge him as a persistent violator (potential life sentence) are a significant factor inasmuch as a plea
17 can be heavily motivated by reduced exposure to additional criminal penalties. *Id.* Such a
18 concession to reduce a potential penalty is significant and supports the conclusion that Wolf would
19 have pled guilty even if he had knowledge of the gay.com user agreement²⁴ or access to the probable
20 cause affidavit or search warrant.

21 In light of the evidentiary weakness of the allegedly withheld evidence and the significant
22 benefits offered to Wolf in exchange for a guilty plea, the Court concludes there is no reasonable
23 probability that if the evidence had been disclosed to the defense, Wolf would have insisted on going

24 ²³ To prevail on an ineffective assistance of counsel claim, the petitioner must show a reasonable probability that, but for
the attorney's deficient performance, he or she would not have pled guilty and would have insisted on going to trial. *Hill*
v. Lockhart, 474 U.S. 52, 59 (1985).

25 ²⁴ Since Wolf apparently was a user of gay.com, he has not explained why he did not know about the user agreement.

1 to trial rather than pleading guilty. Because Wolf has not demonstrated a genuine issue of material
2 fact that the result of the proceeding would have been different, he fails to establish a basis for the
relief he seeks. Therefore, dismissal of Wolf's *Brady* claims is proper.

3 **II. WOLF'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS FAIL.**

4 In order to survive summary dismissal of a petition for post-conviction relief based on a
5 claim of ineffective assistance of counsel, the petitioner, Wolf, must establish by a preponderance of
6 the evidence: (1) a material issue of fact exists as to whether counsel's performance was deficient;
7 and (2) a material issue of fact exists as to whether the deficiency prejudiced petitioner's case. *See*
8 *Raudebaugh v. State*, 135 Idaho 602, 21 P.3d 924, 926 (2001); *Pratt v. State*, 134 Idaho 581, 583, 6
9 P.3d 831, 833 (2000) (citing *Berg v. State*, 131 Idaho 517, 518-19, 960 P.2d 738, 739-40 (1998)).
Wolf's Amended Petition fails on both counts.

10 The Court finds there are no material issues of fact remaining as to whether any of Wolf's
11 counsels' performance were deficient. The Court further finds that as to each claim there are no
12 material issues of fact as to whether any alleged deficiencies prejudiced his case. For the purposes of
13 this Amended Petition, the Court assumed truth of Wolf's allegations of fact unless those factual
allegations were clearly shown to be wrong by the record. I.C. § 19-4906.

14 In order to succeed on post-conviction, Wolf must show, by a preponderance of the evidence,
15 that he was prejudiced by his attorney's deficiency; prejudice is shown by demonstrating the
16 outcome would have been different. *Strickland v. Washington*, 466 U.S. 668, 691-92 (1984);
17 *Ramirez v. State*, 119 Idaho 1037, 1041, 812 P.2d 751, 755 (Ct. App. 1991). Further, "[t]o establish
18 prejudice, the applicant must show a reasonable probability that, but for the attorney's deficient
19 performance, the outcome of the trial would have been different." *Gilpin-Grubb v. State*, 138 Idaho
20 76, 81, 57 P.3d 787, 792 (2002) (quoting *Jakoski v. State*, 136 Idaho 280, 282, 32 P.3d 672, 674 (Ct.
App. 2001)).

21 To demonstrate that counsel's performance was deficient, Wolf must show that his counsel's
22 advice was not "within the range of competence demanded of attorneys in criminal cases." *Hill v.*
23 *Lockhart*, 474 U.S. 52, 56 (1985); *Matthews v. State*, 136 Idaho 46, 49, 28 P.3d 387, 390 (Ct. App.
24 2001); *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988). There is a "strong
25 presumption that counsel's conduct falls within the wide range of acceptable professional

1 assistance....” *Strickland*, 466 U.S. at 689; *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176
2 (1988). The burden is on the defendant to prove a claim of ineffective assistance of counsel. *Hollon*
3 *v. State*, 132 Idaho 573, 576, 976 P.2d 927, 930 (1999) (citing *Aragon*, 114 Idaho at 761, 760 P.2d at
4 1177). Idaho courts will not second guess strategic and tactical decisions of trial counsel whether to
5 pursue a particular issue or theory, unless there is “evidence that the decision was the result of
6 inadequate preparation, ignorance of the law, or other shortcomings capable of objective evaluation.”
7 *Short v. State*, 135 Idaho 40, 13 P.3d 1253, 1255-1256 (Ct. App. 2000) (citing *Huck*, 124 Idaho at
8 160, 857 P.2d at 639).

9 In addition, in order to satisfy the prejudice requirement, Wolf must show that there is a
10 reasonable probability that, but for counsel’s errors, he would not have pled guilty and would have
11 insisted on going to trial. *Hill*, 474 U.S. at 59.

12 It is against this backdrop that the Court analyzes Wolf’s ineffective counsel claims.

13 **A. Failure to Investigate.**

14 When the alleged error of counsel is a failure to investigate or discover potential exculpatory
15 evidence, the determination of whether the error was prejudicial depends on whether the evidence
16 would have led counsel to change his recommendation as to the plea. The assessment then turns on
17 whether the evidence would have succeeded at trial. *Hill*, 474 U.S. at 59; *Hollon v. State*, 132 Idaho
18 573, 578-579, 976 P.2d 927, 932-933 (1999). As discussed above, the gay.com subscriber evidence
19 would not have affected the outcome. The user agreement would not change the fact that he initiated
20 the contact with a person he thought was fifteen or that he suggested sexual behavior and a meeting.
21 Wolf does not present any persuasive argument that his trial counsel’s investigation was below an
22 objective standard.

23 Moreover, other than the gay.com subscriber information and now the pre-sentence report
24 information, discussed below, Wolf does not disclose the nature of this missing information or what
25 an investigation would have produced. He does not indicate how it would have been used in his
26 defense. Wolf must show some prejudice resulting from his trial counsel’s failure other than a
conclusory allegation – even where the allegation is made forcefully. Bare assertions that discovery
was not properly conducted or that all avenues of investigation were not exhausted will not, by
themselves, give rise to a right to relief. *Jones v. State*, 125 Idaho 294, 297, 870 P.2d 1, 4 (Ct. App.

1 1994). An applicant must provide at least some indication of what information is missing or how it
2 would have been used in the defense. *Id.* Without such a showing, there can be no evidence of
3 prejudice and a claim is subject to summary dismissal. *Id.*

4 Consequently, the Court finds Wolf has not established a claim of ineffective assistance of
5 trial counsel in this regard.

6 **B. The failure to pursue a suppression motion was not ineffective assistance of**
7 **counsel.**

8 Wolf claims his trial counsel was ineffective for failing to file a suppression motion to
9 suppress evidence found at his residence and on his computer. However, initially Wolf did not
10 identify what should have been suppressed or on what grounds. He simply complained that he never
11 saw the search warrant or affidavit of probable cause. However, he did not indicate how it would
12 have affected the outcome. Therefore, the Court found that Wolf raised no genuine issue of fact
13 material to the Court's decision.

14 Wolf now claims there was no search warrant and, therefore, his trial counsel was ineffective
15 by failing to file a motion to suppress the evidence seized. If that were the case, that would be
16 ineffective assistance of counsel. However, the court records demonstrate conclusively that there
17 was a search warrant. *See* Ex. A. Therefore, there was no basis for a motion to suppress.

18 Consequently, the Court finds Wolf has not established a claim of ineffective assistance of
19 counsel in this regard.

20 **C. Wolf's trial counsel was not ineffective for failing to pursue the entrapment**
21 **defense.**

22 Wolf also claims his trial counsel was ineffective because he failed to investigate or pursue
23 an entrapment defense.

24 A defendant cannot be convicted of a crime he or she was entrapped into committing. *State v.*
25 *Canelo*, 129 Idaho 386, 391, 924 P.2d 1230, 1235 (Ct. App. 1996); *State v. Mata*, 106 Idaho 184,
26 186, 677 P.2d 497, 499 (Ct. App. 1984). Historically, under the subjective test, the entrapment
defense has been grounded upon the principle that, where criminal intent is an element of an offense,
such intent must originate in the defendant's mind. *Mata*, 106 Idaho at 186, 677 P.2d at 499. Thus,

1 entrapment occurs when an otherwise innocent person,²⁵ not inclined to commit a criminal offense,
2 is induced to do so by a state agent who, desiring grounds for prosecution, originates the criminal
3 design and implants in the mind of the innocent person the disposition to commit the alleged offense.
4 *Canelo*, 129 Idaho at 391, 924 P.2d at 1235; *State v. Kopsa*, 126 Idaho 512, 519, 887 P.2d 57, 64
5 (Ct. App. 1994). There is a distinction however, between originating the idea to commit the crime
6 and merely furnishing the opportunity to commit it. *Kopsa*, 126 Idaho at 519, 887 P.2d at 64; *Mata*,
7 106 Idaho at 186, 677 P.2d at 499. Furnishing the opportunity is not entrapment but, rather, a
8 legitimate means to ferret out crime. *Canelo*, 129 Idaho at 392, 924 P.2d at 1236; *Kopsa*, 126 Idaho
9 at 519, 887 P.2d at 64; *Mata*, 106 Idaho at 186, 677 P.2d at 499.

10 The facts clearly establish there was no basis for an entrapment defense. Allegations without
11 more are not sufficient to warrant post-conviction relief. The chat transcript clearly establishes that
12 Wolf first contacted what he thought (and he admitted he thought) was a fifteen year old boy. Wolf
13 initiated the explicitly sexual chat and as demonstrated in the Fact section, he was the first to suggest
14 that they meet for a sexual purpose. Allegations are insufficient for the granting of relief when they
15 are clearly disproved by the record or do not justify relief as a matter of law. *Cooper*, 96 Idaho at
16 545, 531 P.2d at 1190; *Cootz v. State*, 129 Idaho 360, 368, 924 P.2d 622, 630 (Ct. App. 1996).
17 Based on the transcript of the chat itself, the Court would not have allowed an entrapment instruction
18 be given to the jury. A defendant is not entitled to jury instruction on the defense of entrapment
19 where there was no evidence of undue influence, compulsion, or persuasion from the detective
20 conducting the undercover transactions, and the detective merely presented defendant with an
21 opportunity to violate law. *State v. Ingram*, 138 Idaho 768, 69 P.3d 188 (2003). There was no
22 evidence to support this instruction.

23 For example, a trial counsel's failure to present an entrapment defense in a possession of
24 controlled substance trial is reasonable trial strategy, and thus not ineffective assistance of counsel
25 where the evidence is overwhelming that in fact the defendant was the instigator. *See Suits v. State*,
143 Idaho 160, 139 P.3d 762 (2006). That is the case here.

26 ²⁵ Wolf continues to ignore this part of the entrapment defense. Wolf admitted he thought the person with whom he was
27 communicating was in fact fifteen years old. The records clearly indicate that he was the one who initiated the contact
and initiated the suggestion that the two have a sexual encounter. There is no evidence to support an entrapment defense.

1 Furthermore, Wolf pled guilty and specifically admitted his guilt to the pre-sentence
2 investigator with regard to his activity. A plea of guilty has the same force and effect as a judgment
3 rendered after a full trial on the merits. *Lockard v. State*, 92 Idaho 813, 818, 451 P.2d 1014,
4 1019 (1969). By pleading guilty, Wolf waived all defenses which might have been raised other than
5 the defense that the information failed to state a public offense or the defense that the court did not
6 have jurisdiction. *Id.*; *State v. Dawn*, 41 Idaho 199, 239 P. 279 (1925); *State v. Grady*, 89 Idaho 204,
404 P.2d 347 (1965).

7 'A plea of guilty differs in purpose and effect from a mere admission or an
8 extrajudicial confession; it is itself a conviction. Like a verdict of a jury it is
9 conclusive. More is not required; the court has nothing to do but give judgment and
sentence.' *Kercheval v. United States*, 274 U.S. 220, 223, 47 S.Ct. 582, 583, 71 L.Ed.
1009 (1927).

10 *Lockard*, 92 Idaho at 818, 451 P.2d at 1019. Thus, he waived all defenses including any entrapment
defense even if one was possible.

11 The Court finds Wolf failed to show that his counsel's advice was not "within the range of
12 competence demanded of attorneys in criminal cases." Thus, the Court finds Wolf has not
13 established a claim of ineffective assistance of counsel in this regard.

14 **D. The decision to disqualify Judge Wetherell was a strategic decision.**

15 Wolf contends his trial counsel was ineffective because he disqualified the first district judge,
16 the Honorable Michael Wetherell, without discussing it with him. While he produced no affidavit
from his trial counsel, the Court assumes his assertion that he was not consulted is true.

17 Idaho courts will not second guess strategic and tactical decisions of trial counsel whether to
18 pursue a particular issue or theory, unless there is "evidence that the decision was the result of
19 inadequate preparation, ignorance of the law, or other shortcomings capable of objective evaluation."
20 *Short v. State*, 135 Idaho 40, 13 P.3d 1253, 1255-1256 (Ct. App. 2000) (citing *Huck*, 124 Idaho at
21 160, 857 P.2d at 639). In order to satisfy the prejudice requirement, Wolf must show that there is a
22 reasonable probability that, but for counsel's errors, he would not have pled guilty and would have
insisted on going to trial. *Hill*, 474 U.S. at 59.

23 More importantly, Wolf has failed to establish prejudice. He has made no showing and
24 identifies nothing in the record which establishes any biased action by this Court. Without that, he
25 has not established prejudice. Just his conclusory allegations complaining about this Court's rulings

1 does not establish prejudice. Therefore, this claim fails the second prong of the *Strickland* test. *Hall*
2 *v. State*, 126 Idaho 449, 452, 885 P.2d 1165, 1168 (Ct. App. 1994).

3 **E. Trial counsel's failure to object to the use of prior pre-sentence reports or get**
4 **copies of prior sentencing court transcripts does not amount to ineffective**
5 **assistance of counsel.**

6 Initially, Wolf complained that his trial counsel was ineffective by failing to object to the use
7 of prior pre-sentence reports because their release had not been ordered by the sentencing court. In
8 his Amended Petition Wolf complained that no order had been entered and he also claimed that his
9 trial counsel was ineffective by failing to get copies of prior sentencings to show some of the
10 contents of earlier pre-sentence reports had been corrected.

11 Contrary to his Amended Petition and Affidavit, Wolf has since learned that an order had
12 been entered. Therefore, he modified his claim and in his Second Affidavit he now complains that
13 his counsel was ineffective because his attorney failed to know an order had actually been entered by
14 Judge Kerrick releasing his pre-sentence report in the Canyon County case to the pre-sentence
15 investigator. He further claims that this somehow violated his rights and that his attorney should
16 have known about it. He cites no authority for this claim. The Court, however, notes that an order is
17 not required for the Department of Corrections to view its own documents and a defendant is not
18 entitled to object to its release.

19 The requirements and guidelines for the proper content of presentence investigation reports
20 are found in I.C.R. 32(b). Provided that a defendant is afforded a full opportunity to present
21 favorable evidence and to explain and rebut adverse evidence, and a reasonable opportunity to
22 examine all of the materials contained in the PSI, the defendant and the court can be assured of the
23 reliability and the fairness of the conclusions presented therein. *State v. Chapman*, 120 Idaho 466,
24 471, 816 P.2d 1023, 1028 (Ct. App.1991); *see* I.C.R. 32(g).

25 The transcripts demonstrate clearly that Wolf and his attorney were given additional time to
26 review the entirety of the pre-sentence report including the prior reports. In fact, the Court even
continued his sentencing for one week to allow him more time to review the pre-sentence report. At
the sentencing hearing, as set forth above, Wolf was given, and took advantage of, an opportunity to
rebut certain evidence contained in the presentence report. Wolf's counsel corrected a number of

1 factual errors, which the Court properly noted. Wolf does not explain why he did not bring up any
2 other corrections at his sentencing February 20, 2008.

3 Furthermore, he still has not identified what the errors were or how they prejudiced him. The
4 failure to identify the errors at sentencing when given the opportunity waives those errors. *See State*
5 *v. Jagers*, 98 Idaho 779, 780, 572 P.2d 882, 883 (1977). A defendant bears the burden of raising
6 objections to the report at the time of his sentencing and where no objection is made and the report
7 substantially meets the requirements of I.C.R. 32 it cannot be the basis of post-conviction relief.
8 *Cunningham v. State*, 117 Idaho 428, 788 P.2d 243 (Ct. App. 1990); *see also State v. Thacker*, 98
Idaho 369, 564 P.2d 1278 (1977); *Volker v. State*, 107 Idaho 1059, 695 P.2d 809 (Ct. App. 1985);
State v. Toohill, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982).

9 Likewise, with respect to the previous presentence report being included, he has offered no
10 authority to establish that admission of prior reports was not proper.²⁶ *Fodge v. State*, 125 Idaho
11 882, 886, 876 P.2d 164, 168 (Ct. App. 1994). A defendant's prior criminal activity is a proper
12 consideration for a sentencing judge and is properly included in a pre-sentence report. *State v.*
13 *Couch*, 103 Idaho 496, 498, 650 P.2d 638, 640 (1982); *see* I.C.R. 32(e)(2). Likewise, while he
14 complains that the use of the prior pre-sentence reports required a court order,²⁷ he misreads I.C.R.
15 32(h). A pre-sentence report is always available to the Department of Corrections. The Department
16 of Corrections prepares the pre-sentence report and the rule allows it to retain for three years after a
17 defendant is discharged from parole or probation. There is no rule requiring an order to release it to
the pre-sentence department for use in a new pre-sentence report.

18 Finally, while Wolf claims there were errors in the reports, he does not identify what those
19 errors were in his Affidavits filed in support of the Amended Petition and Wolf does not explain how
those alleged errors prejudiced him. Thus, these claims do not support post-conviction relief.

20 **F. Appellate counsel's selection of issues was not ineffective.**

21 Wolf asserts that his appellate counsel was ineffective for failing to raise on direct appeal "all
22 non-frivolous issues." In his Amended Petition, he fails to identify what those non-frivolous issues

23
24 ²⁶ He cites to no case law and the Court has already analyzed the existing rules.

25 ²⁷ He now complains that indeed there was an order but that he should have been given an opportunity to object.
However, he does not identify a legal basis to object.

1 are. However, in his Affidavits, he claims, for example, without explanation, that his appellate
2 counsel should have argued that his sentence violated the Eighth Amendment as cruel and unusual
3 punishment.²⁸ He now also claims that his appellate counsel should have raised the pre-sentence
4 report issues, the syphilis issues, and issues reserved for federal habeas actions.²⁹ As discussed
5 above, these issues are frivolous. There is no evidence that Wolf would have succeeded on appeal or
6 that he was prejudiced by counsel's failure to bring these additional arguments. Furthermore, it may
7 have cluttered the appeal. As Justice Jackson has stated:

8 The mind of an appellate judge is habitually receptive to the suggestion that a lower
9 court committed error. But receptiveness declines as the number of assigned errors
10 increases. Multiplicity hints at lack of confidence in any one.

11 Jackson, Advocacy Before the United States Supreme Court, 25 Temple L.Q. 115, 119 (1951)
12 (quoted in *Jones v. Barnes*, 463 U.S. 745, 753 (1983)); see also *Jakoski v. State*, 136 Idaho 280, 285-
13 287, 32 P.3d 672, 677 - 679 (Ct. App. 2001).

14 Finally, the Supreme Court of the United States suggested in *Engle v. Isaac*, 456 U.S. 107
15 (1982), that the failure to make constitutional arguments does not render appellate counsel
16 ineffective: "[T]he constitution guarantees criminal defendants only a fair trial and a competent
17 attorney. It does not insure that defense counsel will recognize and raise every conceivable
18 constitutional claim." *Id.* at 133. In *Jones v. Barnes*, 463 U.S. 745 (1983), the Supreme Court
19 likewise held that appellate counsel does not have a constitutional duty to raise every non-frivolous
20 issue requested by defendant.

21 ²⁸ In this case, Wolf received a unified sentence of two (2) years fixed with twenty-three (23) years indeterminate for
22 Enticing Children over the Internet and for Possession of Sexually Exploitive Material. The Court of Appeals affirmed
23 this sentence in an unpublished decision. When reviewing an Eighth Amendment claim of cruel and unusual punishment,
24 an appellate court must first make a threshold comparison of the crime committed and the sentence imposed to determine
25 whether the sentence leads to an inference of gross disproportionality, *State v. Brown*, 121 Idaho 385, 394, 825 P.2d
26 482, 491 (1992), that is, we determine whether the sentence is out of proportion to the gravity of the offense committed.
27 *Id.*; *State v. Robertson*, 130 Idaho 287, 289, 939 P.2d 863, 865 (Ct. App. 1997). This gross disproportionality test is
28 equivalent to the standard under the Idaho Constitution, which focuses on whether the punishment is so out of proportion
29 to the gravity of the offense as to shock the conscience of reasonable people. *Brown*, 121 Idaho at 394, 825 P.2d at 491.
30 An "intra-and inter-jurisdictional" analysis is "appropriate only in the rare case" where the sentence is grossly
31 disproportionate to the crime committed. *State v. Grazian*, 144 Idaho 510, 517, 164 P.3d 790, 797 (2007); *State v.*
32 *Matteson*, 123 Idaho 622, 626, 851 P.2d 336, 340 (1993); see also *State v. Wright* 147 Idaho 150, 160, 206 P.3d 856,
33 866 (Ct. App., 2009). There is nothing disproportional about a two (2) year fixed sentence with twenty-three (23) years
34 determinate for these crimes. In other words, it would have been a waste of time to raise this issue on appeal.

35 ²⁹ Wolf now complains that his appellate counsel should have raised other issues not previously claimed.

1 In line with these precedents, the Court concludes that Wolf was not prejudiced by counsel's
2 failure to raise additional challenges on direct appeal.

3 **III. ALLEGED VIOLATION OF THE SEPARATION OF POWERS AND DUE
4 PROCESS.**

5 Wolf claims that the Court violated the separation of powers by ordering a psychosexual
6 evaluation "wherein it requested to determine whether the petitioner was a violent sexual predator."
7 Wolf cites to *Smith v. State*, 146 Idaho 822, 824, 203 P.3d 1221, 1223 (2009), in support of his
8 contention. However, there are two problems with his claim on post-conviction.

9 First, to the extent that Wolf frames this post-conviction claim as a claim of error by the
10 Court, the claim does not provide grounds for post-conviction relief because it could have been
11 raised in Wolf's direct appeal. See I.C. § 19-4901(b); *Hollon v. State*, 132 Idaho 573, 581, 976 P.2d
12 927, 935 (1999); *Brown v. State*, 137 Idaho 529, 50 P.3d 1024, (Ct. App. 2002); *Cootz v. State*, 129
13 Idaho 360, 364, 924 P.2d 622, 626 (Ct. App. 1996).

14 Second, while the psychosexual evaluator evaluated him under the statutory scheme found
15 unconstitutional in *Smith*, Wolf was not found to be a violent sexual predator. Therefore, he was not
16 prejudiced and his claim will not support post-conviction relief.

17 **IV. HIS SYPHILIS DOES NOT FORM THE BASIS TO CHALLENGE THE
18 PSYCHOSEXUAL EVALUATION ON POST-CONVICTION.**

19 It appears from his Amended Petition and Affidavits that Wolf is also arguing that his newly
20 diagnosed syphilis adversely affected his psychosexual evaluation. However, as discussed above, he
21 presents no evidence to support his claim that his syphilis affected his psychosexual evaluation other
22 than his conclusory claims. Moreover, as discussed in the **BACKGROUND** section above, the
23 evaluation itself clearly shows that at the time he was being evaluated he was competent and showed
24 no signs that he was not competent. Therefore, the Court finds this does not justify post-conviction
25 relief.

26 **CONCLUSION**

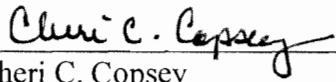
After reviewing the evidence and pleadings before it, the Court finds that no purpose would
be served by any further proceedings and finds, as a matter of law, that Wolf is entitled to none of the
post-conviction relief requested. *Repp v. State*, 136 Idaho 262, 32 P.3d 156, 157-58 (Ct. App. 2001).

1 Having reviewed the Amended Petition, various Affidavits and any evidence in a light most
2 favorable to Wolf, the Court finds that it is satisfied that Wolf is not entitled to post-conviction
3 relief. I.C. §19-4906(2).

4 The Court further finds there is no dispute of material fact and no purpose would be served
5 by any further proceedings. Therefore, the Court dismisses Wolf's Amended Petition.

6 **IT IS SO ORDERED.**

7 DATED this 10th day of June 2010.

8 
9 Cheri C. Copsey
10 District Judge
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1 I, J. David Navarro, the undersigned authority, do hereby certify that on June 10th, 2010, I
2 mailed, by United States Mail, one copy of the: **ORDER SUMMARILY DISMISSING PETITION**
3 **FOR POST CONVICTION RELIEF** to each of the attorneys of record in this cause in envelopes
4 addressed as follows:

5 ADA COUNTY PROSECUTING ATTORNEY
6 INTER DEPT MAIL
7 GABE HAWS

8 ADA COUNTY PUBLIC DEFENDER
9 INTER DEPT MAIL
10 MIKE LOJEK

11 ANDREW J. WOLF
12 IDOC # 35408
13 ICC, P-20-A
14 P.O. BOX 70010
15 BOISE, IDAHO 83707

16 J. DAVID NAVARRO
17 Clerk of the District Court
18 Ada County, Idaho

19 Date: JUN 10 2010

20 By 

21 Deputy Clerk

NO. 10.25 FILED 10.25
A.M. P.M.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF

AUG 21 2007
By David K. Vavaro, Clerk
DEPUTY

IN THE MATTER OF THE)
APPLICATION FOR)
SEARCH WARRANT.)
_____)

**RETURN OF
SEARCH WARRANT**

2233 Panama

STATE OF IDAHO)
COUNTY OF ADA)

COMES NOW, Detective Pat Schneider, who being first duly sworn
upon oath, deposed and says:

That he received the attached Search Warrant on the 20th day of August,
2007. That he **(executed)** or ~~(failed to execute)~~ the same, thereby taking into
possession:

(See Attached List)

(Nothing)

Patricia L. Schneider
Signature

SUBSCRIBED AND SWORN TO
before me this 21st day of August, 20 07.

[Signature]

RETURN OF SEARCH WARRANT

Exhibit A

00620

GREG H. BOWER

Ada County Prosecuting Attorney

Kai E. Wittwer

Deputy Prosecuting Attorney

200 W. Front Street, Room 3191

Boise, ID 83702

Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF THE)

APPLICATION FOR SEARCH)

WARRANT)

SEARCH WARRANT .

**THE STATE OF IDAHO, TO ANY SHERIFF, CONSTABLE, MARSHAL OR
POLICEMAN IN THE COUNTY OF ADA:**

PROOF, by Affidavit, having been this day laid before me by Detective Pat Schneider of the Ada County Sheriff's Office, showing that certain evidence of a crime, Enticing of Children Over the Internet, to wit:

1. Computer hardware, software, disks, optical disks, notes or documents including manuals for software. This is for the locating of electronic mail or electronic transmissions that may be left behind on the computer in stored, saved and/or deleted files, archived, or copied format. The copies may be saved on a variety of media, included but not limited to optical, magnetic and paper format. Computer hardware is described as any and all computer equipment, including any electronic devices, which are capable of collecting, analyzing, creating, and transmitting electronic, magnetic, optical, or similar computer impulses or data. These

devices include but are not limited to any data-processing hardware, internal and peripheral storage devices (such as fixed disks, external hard disks, floppy disk drives and diskettes, tape drives and tapes, optical storage devices, and other memory storage devices.) Peripheral input/output devices to include keyboard, printers, scanners, plotters and monitors and related communications devices such as modems, cables and connections, recording equipment, RAM or ROM units, acoustical coupler, automatic dialers, speed dialers, programmable telephone dialing or signaling devices. Any network storage devices including, but not limited to Proxy logs or any other network logs and door access points, network storage files, passwords and profile names and workplace time and attendance records. These items are needed so that a forensic examination and testing can be completed for the search of stored and deleted photographs and files. Also to include any information that would lead to the identification of other victims that have been contacted on the Internet. This would include screen names, real names, photographs and videos of minor children.

2. Any and all writings, which would include the name greenmonsterlm07 or the address on Sapphire Place (2181 N. Sapphire Meridian, Id) or directions to that address.

3. Articles of personal property tending to establish the origins of the above-described contraband/evidence consisting in part of and including, but not limited to, bills, receipts, maps and charts; articles of personal property and/or any documents tending to establish indicia of ownership, occupancy, and/or identify of persons in control of the premises, residences, computer, containers where any of the above-described contraband may be found, consisting in part of, but not limited to utility company receipts, rent receipts, canceled mail envelopes and keys.

4. Images and videos of child pornography, or sexually exploitative material as defined in chapter 15, title 18, Idaho Code, which are stored on computers or are printed and/or copied from the hard drive of the computer to external storage devices, to include but not limited to, floppy discs, compact discs and zip drives.

These items are located in the following described premises, to-wit:

1. 2233 Panama, Boise City, Ada County, Idaho, and is further described as a single story duplex located on the south side of Panama, east of Vista Avenue. The front of the duplex faces north containing both 2231 and 2233 Panama. The 2233 Panama address is

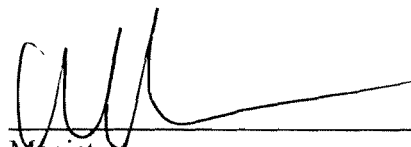
on the western-most side of the duplex. The duplex building is yellow in color with greenish/turquoise trim. The door of the residence is greenish/turquoise in color matching the trim facing in a northerly direction. The numbers of "2233" are fixed directly to the residence just above a black mailbox under a carport. The duplex has a chain link fence surrounding its back yard on the south side.

YOU ARE THEREFORE COMMANDED, at any time of the day or night, to make immediate search of the above-described premises/motor vehicle for the evidence or property described above and to seize the property on the Search Warrant Affidavit filed herein.

Return to this Warrant is to be made to the above-entitled Court within 14 days from the date hereof.

GIVEN under my hand and dated this 20 day of August 2007

at 3:49 o'clock. p.m.



Magistrate

Day or Nighttime Service _____

**ADA COUNTY SHERIFF
BOISE POLICE
PROPERTY INVOICE**

RD	DR No.	PAGE
	11092	OF 2
DATE	8/20/07	TIME 1620
Property Codes	1 = Stolen 2 = Embezzled 3 = Seized 4 = Evidence	5 = Found 6 = Safekeeping 7 = Destruct only 8 = Other

☐ INVOICE ONLY ☒ REPORT TO FOLLOW ☐ CITED/NO REPORT

BOOKING OFFICER P. SCHNEIDER	ADA NO. #4461	APPROVED BY	OFFENSE ENTRANCE OF CHILDREN SITE THE INTERNET	FELONY, MISD. FELONY
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PROPERTY USE ONLY

ITEM NO.	DESCRIPTION	SERIAL NO.	DISPO.	BAR CODE
PLS 1	UNKNOWN BRAND COMPUTER TOWER / SWEET PAK COLOR	NO SERIAL #		
*CODE 4	OWNER'S NAME ANDREW WOLF	LOCATION SEIZED FRONT LIVING ROOM - BLUE		
PLS 2	CLEARWIRE ROUTER / MODEM + PHONE ADAPTER			
*CODE 4	OWNER'S NAME ANDREW WOLF	LOCATION SEIZED FRONT LIVING ROOM - BACKER		
PLS 3	MISC. COMPUTER EQUIPMENT (KEYBOARD, MOUSE, CABLES)	NO SERIAL #		
*CODE 4	OWNER'S NAME ANDREW WOLF	LOCATION SEIZED FRONT LIVING ROOM - BLUE		
PLS 4	VISA CARD OF "CHRIS M. RICHARDSON"	4364 5574 3280 010		
*CODE 6	OWNER'S NAME CHRIS M. RICHARDSON - SUPERVISOR	LOCATION SEIZED FRONT LIVING ROOM - BLUE		
PLS 5	TWO DVD'S IN CONTAINER 1. "FAMILY REUNION" 2. "CLONE DVD"	N/A		
*CODE 4	OWNER'S NAME ANDREW WOLF	LOCATION SEIZED 2ND DECK - FRONT LIVING ROOM		
PLS 6	(2) TWO 8MM VIDEO CASSETTE'S	N/A		
*CODE 4	OWNER'S NAME ANDREW WOLF	LOCATION SEIZED FRONT LIVING ROOM - BACKER		
PLS 7	MISC. PORNOGRAPHY VIDEOS	N/A		
*CODE 4	OWNER'S NAME ANDREW WOLF	LOCATION SEIZED 2ND DECK - BLUE		
PLS 8	LOAN TITLE LOANS PAPERWORK FOR ANDREW WOLF	N/A		
*CODE 4	OWNER'S NAME ANDREW WOLF - INDIA	LOCATION SEIZED A. WOLF'S BEDROOM - BLUE		
PLS 9	PORNOGRAPHY VIDEO - DVD	N/A		
*CODE 4	OWNER'S NAME ANDREW WOLF	LOCATION SEIZED BEDROOM DVD PLAYER - BLUE		
PLS 10	MACRON CLIENT PRO COMPUTER TOWER	1426435-0002		
*CODE	OWNER'S NAME ANDREW WOLF	LOCATION SEIZED KITCHEN AREA - BACKER		

HOW PROPERTY OBTAINED/DETAILS OF INCIDENT

ALL ITEMS SEIZED FROM 2233 PANAMA, BOISE, ID UPON SEARCH WARRANT
SERVICE RESIDENCE OF ANDREW WOLF. TAKEN UPON SEARCH WARRANT
SERVICE AFTER ARREST OF ANDREW WOLF FOR "ENTRANCE OF CHILDREN OVER THE INTERNET."

WAVES:	The property is not my own and I do not allege any claim upon the property as against the true owner nor do I allege any claim upon the property as against the City of Boise nor County of Ada, Idaho.	SIGNATURE:
--------	---	------------

PROPERTY OBTAINED FROM	ADDRESS 2233 PANAMA BOISE, ID	PHONE NO.
------------------------	----------------------------------	-----------

Stored at: ☐ Property Room ☐ Other

☐ If Pawn Shop, attach pawn ticket copy to this form

00624

ADA COUNTY SHERIFF BOISE POLICE PROPERTY INVOICE

RD _____ DR No. 11012 PAGE OF 2

DATE 8/20/07 TIME 1620

Property Codes: 1 = Stolen 5 = Found
2 = Embezzled 6 = Safekeeping
3 = Seized 7 = Destruct only
4 = Evidence 8 = Other

☐ INVOICE ONLY ☒ REPORT TO FOLLOW ☐ CITED/NO REPORT

BOOKING OFFICER P. SCHNEIDER ADA NO. #4461 APPROVED BY _____ OFFENSE ENTICING OF CHILDREN OVER THE INTERNET FELONY/MISD. FELONY

ITEM NO.	DESCRIPTION	SERIAL NO.	DISPO.	BAR CODE
<u>PLS-11</u>	<u>MODEL RAS DELL COMPUTER TOWER</u>	<u>F1SLFD1ELL</u>		
*CODE	OWNER'S NAME	LOCATION SEIZED		
<u>4</u>	<u>ANDREW WOLF AND/HER DAUGHTER</u>	<u>DAUGHTER'S BEDROOM - BLUE</u>		
ITEM NO.	DESCRIPTION	SERIAL NO.		
*CODE	OWNER'S NAME	LOCATION SEIZED		
ITEM NO.	DESCRIPTION	SERIAL NO.		
*CODE	OWNER'S NAME	LOCATION SEIZED		
ITEM NO.	DESCRIPTION	SERIAL NO.		
*CODE	OWNER'S NAME	LOCATION SEIZED		
ITEM NO.	DESCRIPTION	SERIAL NO.		
*CODE	OWNER'S NAME	LOCATION SEIZED		
ITEM NO.	DESCRIPTION	SERIAL NO.		
*CODE	OWNER'S NAME	LOCATION SEIZED		
ITEM NO.	DESCRIPTION	SERIAL NO.		
*CODE	OWNER'S NAME	LOCATION SEIZED		
ITEM NO.	DESCRIPTION	SERIAL NO.		
*CODE	OWNER'S NAME	LOCATION SEIZED		
ITEM NO.	DESCRIPTION	SERIAL NO.		
*CODE	OWNER'S NAME	LOCATION SEIZED		
ITEM NO.	DESCRIPTION	SERIAL NO.		
*CODE	OWNER'S NAME	LOCATION SEIZED		
ITEM NO.	DESCRIPTION	SERIAL NO.		
*CODE	OWNER'S NAME	LOCATION SEIZED		

HOW PROPERTY OBTAINED/DETAILS OF INCIDENT
All Item Seized From 2233 PANAMA, BOISE, ID, UPON SEARCH WARRANT SERVED
RESIDENCE OF ANDREW WOLF. TAKEN UPON SEARCH WARRANT SERVED AFTER ARREST
OF ANDREW WOLF FOR "ENTICING OF CHILDREN OVER THE INTERNET."

WAIVER: The property is not my own and I do not allege any claim upon the property as against the true owner nor do I allege any claim upon the property as against the City of Boise nor County of Ada, Idaho. SIGNATURE: _____

PERSON PROPERTY OBTAINED FROM _____ ADDRESS 2233 PANAMA BOISE, ID PHONE NO. _____

storage devices (such as fixed disks, external hard disks, floppy disk drives and diskettes, tape drives and tapes, optical storage devices, and other memory storage devices.) Peripheral input/output devices to include keyboard, printers, scanners, plotters and monitors and related communications devices such as modems, cables and connections, recording equipment, RAM or ROM units, acoustical coupler, automatic dialers, speed dialers, programmable telephone dialing or signaling devices. Any network storage devices including, but not limited to Proxy logs or any other network logs and door access points, network storage files, passwords and profile names and workplace time and attendance records. These items are needed so that a forensic examination and testing can be completed for the search of stored and deleted photographs and files. Also to include any information that would lead to the identification of other victims that have been contacted on the Internet. This would include screen names, real names, photographs and videos of minor children.

2. Any and all writings, which would include the name greenmonsterlm07 or the address on Sapphire Place (2181 N. Sapphire Meridian, Id) or directions to that address.

3. Articles of personal property tending to establish the origins of the above-described contraband/evidence consisting in part of and including, but not limited to, bills, receipts, maps and charts; articles of personal property and/or any documents tending to establish indicia of ownership, occupancy, and/or identify of persons in control of the premises, residences, computer, containers where any of the above-described contraband may be found, consisting in part of, but not limited to utility company receipts, rent receipts, canceled mail envelopes and keys.

4. Images and videos of child pornography, or sexually exploitative material as defined in chapter 15, title 18, Idaho Code, which are stored on computers or are printed and/or copied from the hard drive of the computer to external storage devices, to include but not limited to, floppy discs, compact discs and zip drives.

These items are located in the following described premises, to-wit:

1. 2233 Panama, Boise City, Ada County, Idaho, and is further described as a single story duplex located on the south side of Panama, east of Vista Avenue. The front of the duplex faces north containing both 2231 and 2233 Panama. The 2233 Panama address is on the western-most side of the duplex. The duplex building is yellow in color with greenish/turquoise trim. The

door of the residence is greenish/turquoise in color matching the trim facing in a northerly direction. The numbers of "2233" are fixed directly to the residence just above a black mailbox under a carport. The duplex has a chain link fence surrounding its back yard on the south side.

That he has probable cause to believe and is positive the same is true because of the following facts of which he has personal knowledge:

That your affiant, Detective Pat Schneider is a P.O.S.T. certified detective with the Ada County Sheriff's Office and has been in law enforcement for 16 years and has approximately 2400 hours of P.O.S.T. training. Your affiant has investigated crimes involving Enticing Children on the Internet and Possession of Child Pornography.

On August 20, 2007, Detective Craig Durrell with Ada County Sheriff's office was chatting on-line (on the internet – Gay.com) when a subject using the screen name of Wolf 1 contacted him. Detective Durrell was using the screen name of greenmonsterlm07 and was posing as a 15-year-old boy. Wolf 1 contacted Detective Durrell and almost immediately began talking of sex. Wolf 1 acknowledged during this chat that he knew greenmonsterlm07 was a 15-year old boy. Wolf 1 told greenmonsterlm07 that he was 43-year old male. Wolf 1 asked greenmonsterlm07, who he thought to be a 15-year old boy, if he had an erection and offered to "take care of that" for him making a very deliberate reference to a sexual act on a juvenile male. Wolf 1 stated to greenmonsterlm07 in this chat, "I love a hot load of young cum," again making a very deliberate reference to a sexual act upon a juvenile male. During this chat Wolf 1 also made specific reference to having had sexual contact with another 14-year old male for 6 weeks over the summer, saying this 14-year old male was in the area for the summer from Germany. Wolf 1 told greenmonsterlm07 about this 14-year old German boy saying, "Found him on here [chat] and his parents flew him in for six weeks vacation and I took him around and he was my son the whole time and he loved it." Wolf 1 went on to tell greenmonsterlm07, again referring to the 14-year old German boy, "Dad fucked him all the time."

Upon further chatting Wolf 1 asked greenmonsterlm07 where he lived and eventually arranged to meet with what he thought to be a 15-yr old boy for sexual contact. Prior to finalizing this meeting Wolf 1 confirmed greenmonsterlm07's age by asking him if he was indeed a 15-year old boy. Greenmonsterlm07 confirmed the age of 15 and Wolf 1 continued with the sexual chat and attempts to arrange a meeting in person. Wolf 1 attempted to give greenmonsterlm07 the advice to change his age on his gay.com profile so he would not be kicked off for being a juvenile in

an adult chat room. Wolf 1 stated to greenmonsterlm07, "well thought you might like to have some sexual fun today." Wolf 1 also stated to greenmonsterlm07, "I am 43 but I love younger."

Upon learning that greenmonsterlm07 was home alone and his mother would not be back until 7pm that night Wolf 1 offered to come to greenmonsterlm07's residence stating, "maybe I can just give you some hot oral." When greenmonsterlm07 told Wolf 1 that his mom could not find out about this meeting Wolf 1 responded by saying "oh I know totally man" indicating his knowledge that he knew what he was doing was wrong. Wolf 1 also offered to bring over gay pornography for greenmonsterlm07. Wolf 1 asked greenmonsterlm07 for his address. Once he had that address Wolf 1 stated that he would be over in 20 minutes providing greenmonsterlm07 with his first name of "Andrew." Wolf 1 again mentioned bringing pornography with him as well as beer. The chat was concluded a short time later with the expectation that Wolf 1 was on his way to meet greenmonsterlm07. All chat conversation between greenmonsterlm07 and Wolf 1 has been saved by Ada County Sheriff's Office for later review.

At about 1135 hours on August 20, 2007 a male subject arrived at 2181 N Sapphire Place in Meridian City, Ada County, Idaho, which was the location Wolf 1 and greenmonsterlm07 agreed to meet. He was driving a blue Isuzu truck bearing Idaho plate 1AHG917. The male passed by the Sapphire address once and then returned and parked directly in front. He quickly exited his truck and walked to the front door, ringing the doorbell. He was met at the door by this affiant as well as ACSO Detectives Matt Buie and Jaimie Barker. He was placed under arrest at that time and transported back to the Ada County Sheriff's Office, Major Crimes Unit for interview.

After being advised of his Miranda Warning this subject, identified as Andrew John Joseph Wolf waived those rights and agreed to talk to detectives. Wolf gave written consent for ACSO Detectives to search his vehicle. Inside the vehicle Det. Buie located 4 beers, gay pornography on DVD and a printed Mapquest map of the Sapphire address.

Upon interview by ACSO Detective Craig Durrell, Wolf admitted that he was in fact chatting as Wolf 1 on gay.com with what he thought was a 15-year old boy. When read the entire transcript of that chat Wolf stated that its content was accurate and what was read to him is what he had typed during the chat with greenmonsterlm07. Wolf initially stated that he did not intend to have any sexual contact with greenmonsterlm07 but instead planned on referring him to a Community Center for gay youth in Garden City. Wolf told Detective Durrell that he didn't show up with the "full intent of having sex with this individual." Wolf further elaborated, "I showed up to meet with this individual and based upon my meeting with him and discussing with him, then go

from there. No further.” Detective Durrell replied, “So it could have happened or could not have happened” and Wolf replied, “Exactly. And I doubt it would have happened.” Wolf also told Detective Durrell that he had lied about the contact with the 14-year old German boy that was mentioned during the chat. Wolf told detectives that his address was 2233 Panama, Boise City. Detectives McShane and Rodarte went to that address and confirmed its existence and obtained a description, as noted above. During the interview, Wolf confirmed that he was chatting from the living room at his residence. *ON A COMPUTER PLS*

Your affiant knows from his experience and training that adults who engage in sexual activities with minor children often collect and save child pornography. The Internet is a prime source for these types of pictures and videos. Your affiant knows that images and videos, which are stored on computers, can be recovered during the course of a Forensic examination. Your affiant is also aware that these images are sometimes printed and/or copied from the hard drive of the computer to external storage devices, to include but not limited to, floppy discs, compact discs and zip drives.

Your affiant has talked with Detective Lon Anderson who is an expert in the forensic examination of computers. He advised that the computer-related items listed in the property to be seized are needed for him to make a complete and accurate examination of the computer. Detective Anderson advised your affiant that during his examination of the computer that he is likely to find a partial record of chats that the user of the computer has engaged in. The examination will likely find other records that identify the user of the computer. This evidence is needed to help prove the criminal case against the defendant. Detective Anderson advised your affiant that the examination of computers is a lengthy process. Depending on the type of computer, the size of the hard drive in the computer and the number of computers that Detective Anderson has to examine prior to his examination of this computer will determine the length of time that it takes Detective Anderson to complete this examination and to produce a report. The examination of the computer will therefore extend past the 14-day time frame allowed by the search warrant.

THEREFORE, your affiant has probable cause and is positive that said property described herein is concealed within the above described premises/motor vehicle, outbuildings and grounds thereof, and therefore prays that a Search Warrant be issued.

PATRICK L. SCHNEIDER
Pat Schneider
Ada County Sheriff's Office

SUBSCRIBED AND SWORN to before me this 20th day of August 2007.

[Signature]
Magistrate

Day/Nighttime Service _____.

Do Not Detach Papers From This Folder

MEMORANDA

	DATE			COMPLAINT FILED SUMMONS FILED
	Mo.	Day	Year	
147	Jul	26	2007	[REDACTED]
148	Jul	30	2007	[REDACTED]
149	Aug	1	2007	[REDACTED]
150	Jul	31	2007	[REDACTED]
151	Jul	31	2007	[REDACTED]
152	Aug	2	2007	[REDACTED]
153	Aug	6	2007	[REDACTED]
154	Aug	7	2007	[REDACTED]
155	Aug	8	2007	[REDACTED]
156	Aug	10	2007	[REDACTED]
157	Jul	31	2007	[REDACTED]
158	Jun	14	2007	[REDACTED]
159	Aug	16	2007	[REDACTED]
160	Aug	17	2007	[REDACTED]
161	Aug	17	2007	[REDACTED]
162	Aug	20	2007	[REDACTED]
163	Aug	21	2007	[REDACTED]
164	Aug	21	2007	2233 Panama
165	Aug	23	2007	[REDACTED]
166	Aug	23	2007	[REDACTED]
167	Aug	23	2007	[REDACTED]
168	Aug	24	2007	[REDACTED]
169	Aug	27	2007	[REDACTED]
170	Aug	29	2007	[REDACTED]

00632

JUN 10 2010

J. DAVID NAVARRO, Clerk
By C. WATSON
DEPUTY

1 Andrew J.J. Wolf
2 #35408, ICC
3 P.O. Box 70010
4 Boise, Idaho 83707
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ANDREW J.J. WOLF,	)	oOo
Petitioner,	)	Case No. CV PC 2010-1695
vs.	)	FOURTH AFFIDAVIT OF PETITIONER
STATE OF IDAHO,	)	ANDREW J.J. WOLF
Respondent.)	

STATE OF IDAHO)
County of ADA) ss.

ANDREW J.J. WOLF, being first duly sworn upon oath, deposes and says:

1. I am the petitioner in the above-entitled cause, and make the statements contained herein based upon my own personal knowledge and belief and offer this Affidavit to further address counsel's ineffectiveness in failure to investigate and move to suppress an illegal search and seizure.

2. In my Second Affidavit of Petitioner, pp.3-5, Lns. 11-25, 1-15, I had attempted with due diligence attempted to confer with former Attorney's Steve Botimer and Michael Lojek in order to find out if they or their office had ever received a copy of the Affidavit for Search warrant, Search Warrant and Return of Search Warrant. As such I never received any response from either attorney or their office until June 4, 2010, two days after this Court's deadline.

FOURTH AFFIDAVIT OF PETITIONER
Case No. CV PC 2010-1695

1 3. As previously stated in my Second Affidavit of Petitioner, I had made
2 several attempts to receive a copy of the Affidavit for Search Warrant, Search
3 Warrant and Return of Search Warrant, See Second Affidavit of Petitioner, p.4,
4 Lns. 2-23.

5 4. On June 4, 2010, I received from the Ada County Public Defenders Office
6 a complete copy of the Return of Search Warrant, Search Warrant and Affidavit for
7 Search Warrant. A copy of these documents are attached hereto as Exhibit "BB", and
8 by this reference incorporated herein as if restated in its entirety.

9 5. It should also be noted that former counsel did not mail these documents
10 to me until one day after this court's deadline for filing anything in this case.
11 See Exhibit "BB", p.1. This was nothing more on their part than to attempt hinder
12 me in my attempts to show that they were ineffective in representing me in respects
13 to failure to Investigate and move to suppress the illegal search of my computer
14 hard drives.

15 6. Counsel had possession of the attached Exhibits on November 2, 2001, which
16 was FORTY-ONE (41) days before I had entered a guilty plea. That is 41 days that
17 my Attorney's had time to review and investigate and ensure that it was a valid
18 search on my computer hard drives.

19 7. The exhibits attached hereto fully substantiate the statements set forth
20 more fully in the Third Affidavit of Petitioner and therefore this court must find
21 that my attoney's, Michael Lojek, Larry Moore, and Jonathon Loschi were completely
22 ineffective for failure to investigate and review the Return of Warrant, Search
23 Warrant, and Affidavit for Search Warrant, if they had they would have moved to
24 suppress an illegal search on my computer hard drives for Forensic Examiner Don
25 Lukasik did not conduct any search on the computer hard drives until Detective

1 Craig Durrell from the Ada County Sheriff's Office had requested him to do so on
2 October 2, 2007 which was TWENTY-NINE (29) days after the Warrant had expired on
3 September 2, 2007.

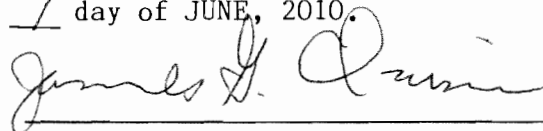
4 8. Based upon the foregoing it is requested that for good cause this court
5 accept this late Fourth Affidavit of Petitioner, and find that Wolf's Attorney's
6 but for there failure to investigate and move to suppress an illegal search were
7 ineffective, and as a result this court must vacate the sentences and guilty pleas
8 in their entirety.

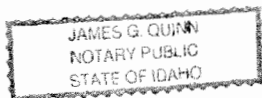
9 9. Further your affiant sayeth naught.

10
11 

12 Andrew J.J. Wolf, Petitioner pro se

13 SUBSCRIBED, SWORN and AFFIRMED this th 7 day of JUNE, 2010.

14 



19 Notary Public for Idaho

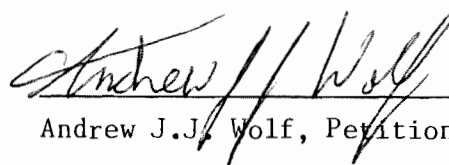
20 Commission expires: 9/10/13

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 7th day of JUNE, 2010, I mailed the foregoing
original to the Court for the purposes of filing with the Court and of mailing
a true and correct copy via the prison mail system for processing to the U.S.
Mail system to:

FAFA ALIDJANI
Deputy Prosecuting Attorney
200 W. Front St. Rm 3191
Boise, ID 83702-7300

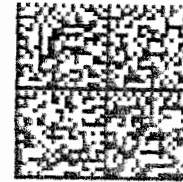


Andrew J.J. Wolf, Petitioner pro se

ADA COUNTY PUBLIC DEFENDER
200 W. FRONT, SUITE 1107
BOISE, IDAHO 83702
17

LEGAL MATERIALS ENCLOSED

PRESORTED
FIRST CLASS



Hasler

016H26516369

\$00.539

06/03/2010

Mailed From 83702

US POSTAGE

JUN 04 2010

Mr. Andrew J. Wolf, #35408
C/o ICC, Unit J
PO Box 70010 P-11
Boise ID 83707

D-RYS11 83707



00636

EXHIBIT 'BB', 1

NO. 10.25 FILED
A.M. 10.25 P.M.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

By David K. V. Brock, Clerk
DEPUTY

IN THE MATTER OF THE)
APPLICATION FOR)
SEARCH WARRANT.)
_____)

**RETURN OF
SEARCH WARRANT**

STATE OF IDAHO)
COUNTY OF ADA)ss:
)

2233 Panama

COMES NOW, Detective Pat Schneider, who bei
upon oath, deposed and says:

That he received the attached Search Warrant on the 20th day of August,
2007. That he **(executed)** or **(failed to execute)** the same, thereby taking into
possession:

(See Attached List)

(Nothing)

RECEIVED
NOV 02 2007

Pat Schneider
Signature

ADA COUNTY PUBLIC DEFENDER

SUBSCRIBED AND SWORN TO
before me this 21st day of August, 20 07.
[Signature]

RETURN OF SEARCH WARRANT

00637

ADA COUNTY SHERIFF BOISE POLICE PROPERTY INVOICE

RD	DR No. 11092	PAGE OF 2
DATE 8/20/07		TIME 1620
Property Codes	1 = Stolen	5 = Found
	2 = Embezzled	6 = Safekeeping
	3 = Seized	7 = Destructive
	4 = Evidence	8 = Other

☐ INVOICE ONLY ☒ REPORT TO FOLLOW ☐ CITED/NO REPORT

BOOKING OFFICER P. SCHNEIDER	ADA NO. #4461	APPROVED BY	OFFENSE ENTICING OF CHILDREN SEE THE INTERNET	FELONY/MISD. FELONY
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PROPERTY USE ONLY

ITEM NO.	DESCRIPTION	SERIAL NO.	DISPO.	BAR CODE
PLS-1	UNKNOWN BRAND COMPUTER TOWER / POWER + BACK LOGIC	NO SERIAL #		
*CODE 4	OWNER'S NAME ANDREW WOLF	LOCATION SEIZED FRONT LIVING ROOM - BLUE		
PLS-2	CLEARWIRE ROUTER / MODEM + PHONE ADAPTER			
*CODE 4	OWNER'S NAME ANDREW WOLF	LOCATION SEIZED FRONT LIVING ROOM - BACKER		
PLS-3	MISC. COMPUTER EQUIPMENT (KEYBOARD, MOUSE, CABLES)	NO SERIAL #		
*CODE 4	OWNER'S NAME ANDREW WOLF	LOCATION SEIZED FRONT LIVING ROOM - BLUE		
PLS-4	VISA CARD OF "CHRIS M. RICHARDSON"	4364 5571 3280 570		
*CODE 6	OWNER'S NAME CHRIS M. RICHARDSON - SHERBOURNE	LOCATION SEIZED FRONT LIVING ROOM DESK - BACKER		
PLS-5	TWO DVD'S IN CONTAINER 1. "GAMER PICS BOOK" 2. "CLOWN DVD"	N/A		
*CODE 4	OWNER'S NAME ANDREW WOLF	LOCATION SEIZED 2ND DECK - FRONT LIVING ROOM		
PLS-6	(2) TWO 8MM VIDEO CASSETTE'S	N/A		
*CODE 4	OWNER'S NAME ANDREW WOLF	LOCATION SEIZED FRONT LIVING ROOM DESK TOP		
PLS-7	MISC. PORNOGRAPHY VIDEOS	N/A		
*CODE 4	OWNER'S NAME ANDREW WOLF	LOCATION SEIZED 2ND DECK - BLUE		
PLS-8	LOAN TITLE LOANS PAPERWORK FOR ANDREW WOLF	N/A		
*CODE 4	OWNER'S NAME ANDREW WOLF - INDIA	LOCATION SEIZED A. WOLF'S BEDROOM - BLUE		
PLS-9	PORNOGRAPHY VIDEO - DVD	N/A		
*CODE 4	OWNER'S NAME ANDREW WOLF	LOCATION SEIZED BEDROOM DVD PLAYER		
PLS-10	MICRON CLIENT PRO COMPUTER TOWER	1426435-0002		
*CODE 4	OWNER'S NAME ANDREW WOLF	LOCATION SEIZED KITCHEN AREA - BACKER		

HOW PROPERTY OBTAINED/DETAILS OF INCIDENT

ALL ITEMS SEIZED FROM 2233 PANAMA, BOISE, ID UPON SEARCH WARRANT SERVICE. RESIDENCE OF ANDREW WOLF. TAKEN UPON SEARCH WARRANT SERVICE AFTER ARREST OF ANDREW WOLF FOR "ENTICING OF CHILDREN OVER THE INTERNET."

WAIVER: The property is not my own and I do not allege any claim upon the property as against the true owner nor do I allege any claim upon the property as against the City of Boise nor County of Ada, Idaho.

SIGNATURE:

PERSON PROPERTY OBTAINED FROM

ADDRESS

PHONE NO.

Stored at: ☐ Property Room ☐ Other

☐ If Pawn Shop attach pawn ticket copy to this form

00638

PROPERTY INVOICE

☐ INVOICE ONLY ☒ REPORT TO FOLLOW ☐ CITED/NO REPORT

ADA NO.

APPROVED BY

PAGE 2
OF 2

DATE 8/20/07 TIME 1620

Property Codes*	1 = Stolen	5 = Found
	2 = Embezzled	6 = Safekeeping
	3 = Seized	7 = Destruct only
	4 = Evidence	8 = Other

FELONY/MISD.
FELONY

PROPERTY USE ONLY

[illegible]

HOW PROPERTY OBTAINED/DETAILS OF INCIDENT

ALL ITEM SEIZED FROM 2233 PANAMA, BOISE ID, UPON SEARCH WARRANT SERVICE.
RESIDENCE OF ANDREW WOLF. TAKEN UPON SEARCH WARRANT SERVICE AFTER ARREST
OF ANDREW WOLF FOR "ENTICING OF CHILDREN OVER THE INTERNET."

SIGNATURE:

ADDRESS

PHONE NO. _____

Stored at: ☐ Property Room ☐ Other

☐ If Pawn Shop attach receipt of sale to this form

GREG H. BOWER

Ada County Prosecuting Attorney

Kai E. Wittwer

Deputy Prosecuting Attorney

200 W. Front Street, Room 3191

Boise, ID 83702

Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF THE)

APPLICATION FOR SEARCH)

WARRANT)

SEARCH WARRANT

_____)
**THE STATE OF IDAHO, TO ANY SHERIFF, CONSTABLE, MARSHAL OR
POLICEMAN IN THE COUNTY OF ADA:**

PROOF, by Affidavit, having been this day laid before me by Detective Pat Schneider of the Ada County Sheriff's Office, showing that certain evidence of a crime, Enticing of Children Over the Internet, to wit:

1. Computer hardware, software, disks, optical disks, notes or documents including manuals for software. This is for the locating of electronic mail or electronic transmissions that may be left behind on the computer in stored, saved and/or deleted files, archived, or copied format. The copies may be saved on a variety of media, included but not limited to optical, magnetic and paper format. Computer hardware is described as any and all computer equipment, including any electronic devices, which are capable of collecting, analyzing, creating, and transmitting electronic, magnetic, optical, or similar computer impulses or data. These

devices include but are not limited to any data-processing hardware, internal and peripheral storage devices (such as fixed disks, external hard disks, floppy disk drives and diskettes, tape drives and tapes, optical storage devices, and other memory storage devices.) Peripheral input/output devices to include keyboard, printers, scanners, plotters and monitors and related communications devices such as modems, cables and connections, recording equipment, RAM or ROM units, acoustical coupler, automatic dialers, speed dialers, programmable telephone dialing or signaling devices. Any network storage devices including, but not limited to Proxy logs or any other network logs and door access points, network storage files, passwords and profile names and workplace time and attendance records. These items are needed so that a forensic examination and testing can be completed for the search of stored and deleted photographs and files. Also to include any information that would lead to the identification of other victims that have been contacted on the Internet. This would include screen names, real names, photographs and videos of minor children.

2. Any and all writings, which would include the name greenmonsterlm07 or the address on Sapphire Place (2181 N. Sapphire Meridian, Id) or directions to that address.
3. Articles of personal property tending to establish the origins of the above-described contraband/evidence consisting in part of and including, but not limited to, bills, receipts, maps and charts; articles of personal property and/or any documents tending to establish indicia of ownership, occupancy, and/or identify of persons in control of the premises, residences, computer, containers where any of the above-described contraband may be found, consisting in part of, but not limited to utility company receipts, rent receipts, canceled mail envelopes and keys.
4. Images and videos of child pornography, or sexually exploitative material as defined in chapter 15, title 18, Idaho Code, which are stored on computers or are printed and/or copied from the hard drive of the computer to external storage devices, to include but not limited to, floppy discs, compact discs and zip drives.

These items are located in the following described premises, to-wit:

1. 2233 Panama, Boise City, Ada County, Idaho, and is further described as a single story duplex located on the south side of Panama, east of Vista Avenue. The front of the duplex faces north containing both 2231 and 2233 Panama. The 2233 Panama address is

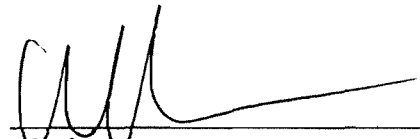
on the western-most side of the duplex. The duplex building is yellow in color with greenish/turquoise trim. The door of the residence is greenish/turquoise in color matching the trim facing in a northerly direction. The numbers of "2233" are fixed directly to the residence just above a black mailbox under a carport. The duplex has a chain link fence surrounding its back yard on the south side.

YOU ARE THEREFORE COMMANDED, at any time of the day or night, to make immediate search of the above-described premises/motor vehicle for the evidence or property described above and to seize the property on the Search Warrant Affidavit filed herein.

Return to this Warrant is to be made to the above-entitled Court within 14 days from the date hereof.

GIVEN under my hand and dated this 20 day of August 2007

at 3:49 o'clock. p.m



Magistrate

Day or Nighttime Service _____

AUG 20 2007

J. DAVID NAVARRO, Clerk
By C. HO
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Kai E. Wittwer
Deputy Prosecuting Attorney
200 W. Front Street
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF THE)
)
APPLICATION FOR SEARCH) **AFFIDAVIT FOR**
) **SEARCH WARRANT**
WARRANT.)
)
)

STATE OF IDAHO)
County of Ada) ss:

Detective Pat Schneider of the Ada County Sheriff's Office, being first duly sworn,
deposes and says:

That he is a duly appointed, qualified, and acting peace officer within the County of Ada, State of Idaho, and that he has reason to believe that certain evidence of a crime, Enticing of Children Over the Internet, to wit:

1. Computer hardware, software, disks, optical disks, notes or documents including manuals for software. This is for the locating of electronic mail or electronic transmissions that may be left behind on the computer in stored, saved and/or deleted files, archived, or copied format. The copies may be saved on a variety of media, included but not limited to optical, magnetic and paper format. Computer hardware is described as any and all computer equipment, ~~including any electronic devices, which are capable of collecting, analyzing, creating, and transmitting electronic, magnetic, optical, or similar computer impulses or data.~~ These devices include but are not limited to any data-processing hardware, internal and peripheral

storage devices (such as fixed disks, external hard disks, floppy disk drives and diskettes, tape drives and tapes, optical storage devices, and other memory storage devices.) Peripheral input/output devices to include keyboard, printers, scanners, plotters and monitors and related communications devices such as modems, cables and connections, recording equipment, RAM or ROM units, acoustical coupler, automatic dialers, speed dialers, programmable telephone dialing or signaling devices. Any network storage devices including, but not limited to Proxy logs or any other network logs and door access points, network storage files, passwords and profile names and workplace time and attendance records. These items are needed so that a forensic examination and testing can be completed for the search of stored and deleted photographs and files. Also to include any information that would lead to the identification of other victims that have been contacted on the Internet. This would include screen names, real names, photographs and videos of minor children.

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1. 2233 Panama, Boise City, Ada County, Idaho, and is further described as a single story duplex located on the south side of Panama, east of Vista Avenue. ~~The front of the duplex faces north containing both 2231 and 2233 Panama. The 2233 Panama address is on the western-most~~ side of the duplex. The duplex building is yellow in color with greenish/turquoise trim. The

door of the residence is greenish/turquoise in color matching the trim facing in a northerly direction. The numbers of "2233" are fixed directly to the residence just above a black mailbox under a carport. The duplex has a chain link fence surrounding its back yard on the south side.

That he has probable cause to believe and is positive the same is true because of the following facts of which he has personal knowledge:

That your affiant, Detective Pat Schneider is a P.O.S.T. certified detective with the Ada County Sheriff's Office and has been in law enforcement for 16 years and has approximately 2400 hours of P.O.S.T. training. Your affiant has investigated crimes involving Enticing Children on the Internet and Possession of Child Pornography.

On August 20, 2007, Detective Craig Durrell with Ada County Sheriff's office was chatting on-line (on the internet - Gay.com) when a subject using the screen name of Wolf 1 contacted him. Detective Durrell was using the screen name of greenmonsterlm07 and was posing as a 15-year-old boy. Wolf 1 contacted Detective Durrell and almost immediately began talking of sex. Wolf 1 acknowledged during this chat that he knew greenmonsterlm07 was a 15-year old boy. Wolf 1 told greenmonsterlm07 that he was 43-year old male. Wolf 1 asked greenmonsterlm07, who he thought to be a 15-year old boy, if he had an erection and offered to "take care of that" for him making a very deliberate reference to a sexual act on a juvenile male. Wolf 1 stated to greenmonsterlm07 in this chat, "I love a hot load of young cum," again making a very deliberate reference to a sexual act upon a juvenile male. During this chat Wolf 1 also made specific reference to having had sexual contact with another 14-year old male for 6 weeks over the summer, saying this 14-year old male was in the area for the summer from Germany. Wolf 1 told greenmonsterlm07 about this 14-year old German boy saying, "Found him on here [chat] and his parents flew him in for six weeks vacation and I took him around and he was my son the whole time and he loved it." Wolf 1 went on to tell greenmonsterlm07, again referring to the 14-year old German boy, "Dad fucked him all the time."

Upon further chatting Wolf 1 asked greenmonsterlm07 where he lived and eventually arranged to meet with what he thought to be a 15-year old boy for sexual contact. Prior to finalizing this meeting Wolf 1 confirmed greenmonsterlm07's age by asking him if he was indeed a 15-year old boy. Greenmonsterlm07 confirmed the age of 15 and Wolf 1 continued with the sexual chat and attempts to arrange a meeting in person. Wolf 1 attempted to give greenmonsterlm07 the advice to change his age on his gay.com profile so he would not be kicked off for being a juvenile in

an adult chat room. Wolf 1 stated to greenmonsterlm07, "well thought you might like to have some sexual fun today." Wolf 1 also stated to greenmonsterlm07, "I am 43 but I love younger."

Upon learning that greenmonsterlm07 was home alone and his mother would not be back until 7pm that night Wolf 1 offered to come to greenmonsterlm07's residence stating, "maybe I can just give you some hot oral." When greenmonsterlm07 told Wolf 1 that his mom could not find out about this meeting Wolf 1 responded by saying "oh I know totally man" indicating his knowledge that he knew what he was doing was wrong. Wolf 1 also offered to bring over gay pornography for greenmonsterlm07. Wolf 1 asked greenmonsterlm07 for his address. Once he had that address Wolf 1 stated that he would be over in 20 minutes providing greenmonsterlm07 with his first name of "Andrew." Wolf 1 again mentioned bringing pornography with him as well as beer. The chat was concluded a short time later with the expectation that Wolf 1 was on his way to meet greenmonsterlm07. All chat conversation between greenmonsterlm07 and Wolf 1 has been saved by Ada County Sheriff's Office for later review.

At about 1135 hours on August 20, 2007 a male subject arrived at 2181 N Sapphire Place in Meridian City, Ada County, Idaho, which was the location Wolf 1 and greenmonsterlm07 agreed to meet. He was driving a blue Isuzu truck bearing Idaho plate 1AHG917. The male passed by the Sapphire address once and then returned and parked directly in front. He quickly exited his truck and walked to the front door, ringing the doorbell. He was met at the door by this affiant as well as ACSO Detectives Matt Buie and Jaimie Barker. He was placed under arrest at that time and transported back to the Ada County Sheriff's Office, Major Crimes Unit for interview.

After being advised of his Miranda Warning this subject, identified as Andrew John Joseph Wolf waived those rights and agreed to talk to detectives. Wolf gave written consent for ACSO Detectives to search his vehicle. Inside the vehicle Det. Buie located 4 beers, gay pornography on DVD and a printed Mapquest map of the Sapphire address.

Upon interview by ACSO Detective Craig Durrell, Wolf admitted that he was in fact chatting as Wolf 1 on gay.com with what he thought was a 15-year old boy. When read the entire transcript of that chat Wolf stated that its content was accurate and what was read to him is what he had typed during the chat with greenmonsterlm07. Wolf initially stated that he did not intend to have any sexual contact with greenmonsterlm07 but instead planned on referring him to a ~~Community Center for gay youth in Garden City.~~ Wolf told Detective Durrell that he didn't show up with the "full intent of having sex with this individual." Wolf further elaborated, "I showed up to meet with this individual and based upon my meeting with him and discussing with him, then go

from there. No further." Detective Durrell replied, "So it could have happened or could not have happened" and Wolf replied, "Exactly. And I doubt it would have happened." Wolf also told Detective Durrell that he had lied about the contact with the 14-year old German boy that was mentioned during the chat. Wolf told detectives that his address was 2233 Panama, Boise City. Detectives McShane and Rodarte went to that address and confirmed its existence and obtained a description, as noted above. During the interview, Wolf confirmed that he was chatting from the living room at his residence. *ON A COMPUTER PLS*

Your affiant knows from his experience and training that adults who engage in sexual activities with minor children often collect and save child pornography. The Internet is a prime source for these types of pictures and videos. Your affiant knows that images and videos, which are stored on computers, can be recovered during the course of a Forensic examination. Your affiant is also aware that these images are sometimes printed and/or copied from the hard drive of the computer to external storage devices, to include but not limited to, floppy discs, compact discs and zip drives.

Your affiant has talked with Detective Lon Anderson who is an expert in the forensic examination of computers. He advised that the computer-related items listed in the property to be seized are needed for him to make a complete and accurate examination of the computer. Detective Anderson advised your affiant that during his examination of the computer that he is likely to find a partial record of chats that the user of the computer has engaged in. The examination will likely find other records that identify the user of the computer. This evidence is needed to help prove the criminal case against the defendant. Detective Anderson advised your affiant that the examination of computers is a lengthy process. Depending on the type of computer, the size of the hard drive in the computer and the number of computers that Detective Anderson has to examine prior to his examination of this computer will determine the length of time that it takes Detective Anderson to complete this examination and to produce a report. The examination of the computer will therefore extend past the 14-day time frame allowed by the search warrant.

THEREFORE, your affiant has probable cause and is positive that said property described herein is concealed within the above described premises/motor vehicle, outbuildings and grounds thereof, and therefore prays that a Search Warrant be issued.

PATRICK L. SCHNEIDER
Pat Schneider
Ada County Sheriff's Office

SUBSCRIBED AND SWORN to before me this 20th day of August 2007.

Ull
Magistrate

Day/Nighttime Service _____.

JUN 15 2010

J. DAVID KAVANAGH, CLERK
By L. AMES
DEPUTY

RECEIVED

JUN 15 2010

Ada County Clerk

Andrew J.J. Wolf
#35408, ICC
Post Office Box 70010
Boise, Idaho 83707

Petitioner,

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ANDREW J.J. WOLF,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

oOo

Case No. CV PC 2010-1695

MOTION FOR EVIDENTIARY HEARING

COMES NOW, Andrew J.J. Wolf, Petitioner pro se, in the above-entitled matter, hereby moves this court for an evidentiary hearing pursuant to Idaho Code §19-4907(a) to be scheduled for the following reasons.

Petitioner has tendered a factual showing of evidence which brings genuine issues of material facts and warrants petitioner the relief sought in the Petition for Post-Conviction Relief.

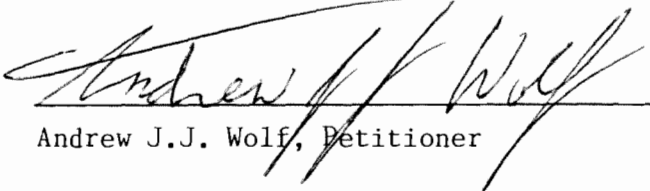
The respondent's motion for summary dismissal and this Court's Order Conditionally Dismissing Petition for Post Conviction Relief are in dispute and contrary to the pleadings and admissible evidence submitted by Petitioner which is presently before this court.

Petitioner has raised claims of ineffective assistance of counsel which he has established deficient conduct by a preponderance of the evidence in which the petitioner has suffered prejudice.

MOTION FOR EVIDENTIARY HEARING
Case No. CV PC 2010-1695

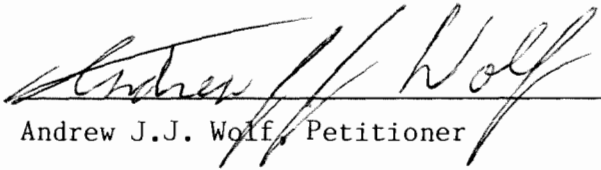
1 Petitioner further requests to be present at the requested evidentiary
2 hearing pursuant to Idaho Code §19-4907(b) for there exists substantial issues of
3 fact as to evidence in which petitioner participated and has personal knowledge of.

4 DATED JUNE 10, 2010.

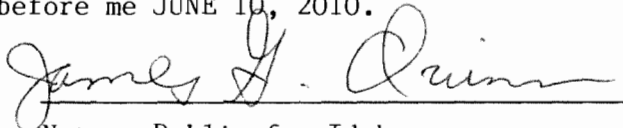
5
6 
Andrew J.J. Wolf, Petitioner

7 STATE OF IDAHO)
8) ss.
County of Ada)

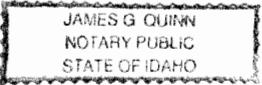
9 Andrew J.J. Wolf, being sworn under oath deposes and says, that he is the
10 petitioner in the above-entitled matter, and, that all statements are true and
11 correct to the best of his knowledge and belief.

12
13 
Andrew J.J. Wolf, Petitioner

14 SUBSCRIBED, SWORN and AFFIRMED to before me JUNE 10, 2010.

15
16 
Notary Public for Idaho

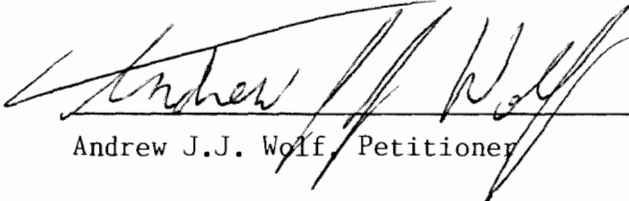
17 Commission expires: 9/10/13

18
19
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26


CERTIFICATE OF MAILING

19 I HEREBY CERTIFY that on JUNE 10, 2010, I mailed the foregoing original
20 to the Court for the purposes of filing with the court and of mailing a true
and correct copy via prison mail system for processing via U.S. Mail to:

21 FAFA ALIDJANI
22 Ada County Dep. Prosecutor
200 W. Front St. RM 3191
Boise, ID 83702-7300

23
24 
Andrew J.J. Wolf, Petitioner

26 MOTION FOR EVIDENTIARY HEARING
Case No. CV PC 2010-1695

NO. _____ FILED _____
AM 9:07 PM

JUN 28 2010

J. DAVID NAVARRO, Clerk
By C. WATSON
DEPUTY

ANDREW J.J. WOLF
#35408, ICC
P.O. BOX 70010
BOISE, ID 83707

Petitioner,

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ANDREW J.J. WOLF,
Petitioner,
vs.
STATE OF IDAHO,
Respondent.

o0o

)
) Case No. CV-PC-2010-1695
)
) MOTION TO ALTER AND AMEND ORDER
) SUMMARILY DISMISSING PETITION
) FOR POST-CONVICTION RELIEF
)
)
)
)

COMES NOW, Andrew J.J. Wolf, Petitioner pro se, who in accordance with Rule 59(e), of the Idaho Rules of Civil Procedure, brings forth this Motion to Alter or Amend the district court's June 10th 2010 Order Summarily Dismissing Petition for Post-Conviction Relief, for the reasons set forth more fully below.

LEGAL STANDARD

Rule 59(e) proceedings give the district court the opportunity to correct legal or factual errors that occurred in the proceedings, and are thus a mechanism for corrective action short of appeal. *Staathaug v. Allstate Ins. Co.*, 979 P.2d 107 (1999). New evidence may not be presented with a Rule 59(e) motion because the proceedings must address the case as it existed when the court rendered the decision upon which the judgment is based. *Low v. Lym*, 646 P.2d 1030, 1034 (COA 1982); *Johnson v. Lambros*, 147 P.3d 100, 103 (COA 2006). Whether to grant or deny a motion to alter or amend a judgment is within the court's discretion. *Horner v. Sani-Top*, 141 P.3d

1 1099 (2006). The Idaho Supreme Court has held that the purpose of the respective
2 rules dictate that Rule 59(e) should be applied if the motion is served within
3 fourteen days of the judgment/order. **Ross v. State**, 141 Idaho 598, 115 P.3d 761
4 (COA 2005); **First Sec. Bank v. Neibar**, 98 Idaho 598 (1977). This motion is
5 therefore timely filed per "mail box rules" for this court's Order was file
6 stamped June 10, 2010, giving Wolf until June 24, 2010 to respond, and per the
7 "mail box rule" Wolf's motion is timely for he delivered to prison officials this
8 motion for the purposes of mailing to the Court Clerk on June 23, 2010. See:
9 **Hayes v. State**, 143 Idaho 88, 91, 137 P.3d 475, 478 (COA 2006).

10 GROUNDS TO ALTER OR AMEND ORDER

11 A. Introduction

12 Under Idaho Law, a petition for post conviction relief cannot be summarily
13 dismissed if it, along with its supporting materials, raises a genuine issue of
14 material fact with regard to a claim which, if proven would entitle Wolf to relief.

15 It is obvious after careful review of this court's Order Summarily Dismissing
16 Wolf's First Amended Petition, this court did not thoroughly read Wolf's First
17 Amended Petition, Affidavit of Petitioner and Exhibits A - C, Second Affidavit of
18 Petitioner and Exhibits D - Z, Third Affidavit of Petitioner and Exhibit AA,
19 Fourth Affidavit of Pettioner and Exhibit BB, and the Brief In Support of the
20 First Amended Petition, thus making this court's June 10th Order rife with a
21 plethora of errors making it amount to a unmitigated fiction. Wolf asks this court
22 that she read and scrutinize very carefully this pending motion due to the
23 plethora of errors in her June 10th Order that will fully be addressed.

24 First, this court or her Clerk has failed to line up the Order's written text
25 with the corresponding numbers in the left margin, thus Wolf will not make use of

1 of the numbers in the left margin, rather Wolf will use the actual physical line
2 number(s) within the Order. Second, this court continually incorrectly sites
3 I.C. 19-4906(2) rather than I.C. 19-4906(b).

4 As set forth in detail below, Wolf contends that with all the Affidavits,
5 Exhibits and Brief In Support of Petition and the underlying record, was adequate
6 to raise such genuine issues of fact which clearly demonstrate a preponderance of
7 evidence to permit Wolf an evidentiary hearing. Therefore, the district court
8 erred in summarily dismissing Wolf's First Amended Petition.

9 **B. Summary Dismissal Standard**

10 For purposes of this Motion, Wolf incorporates by reference his previous
11 standard of review for summarily dismissal from the Brief In Support of First
12 Amended Petition. (See Brief, pp.507, Lns.21-25, 1-6.) As well as the following
13 standard of review.

14 A Petition for Post-Conviction Relief is separate and distinct from the
15 underlying criminal action which led to the petitioner's conviction. **Peltier v.**
16 **State**, 119 Idaho 454, 456, 808 P.2d 373, 375 (1991). It is a civil proceeding
17 governed by the Uniform Post-Conviction Procedure Act (hereinafter, UPCA)(Idaho
18 Code §§19-4901 - 4911) and the Idaho Rules of Civil Procedure. **Peltier**, 119 Idaho
19 at 456, 808 P.2d at 375. Because it is a civil proceeding, the petitioner must
20 prove his allegations by a preponderance of the evidence. **Martinez v. State**, 126
21 Idaho 813, 816, 892 P.2d 488, 491 (COA 1995). However, the petitioner initiating
22 post-conviction proceeding differs from the complaint initiating a civil action.
23 A post-conviction petition is required to include more than "a short plain
24 statement of the claim"; it "must be verified with respect to the facts within the
25 personal knowledge of the applicant, and affidavits, records or evidence supporting

1 its allegations must be attached, or the application must state why such
2 supporting evidence is not attached." *Id.* 19-4903. "In other words, the
3 application must present or be accompanied by admissible evidence supporting its
4 allegations, or the application will be subject to dismissal." *Small v. State*, 132
5 Idaho 327, 331, 971 P.2d 1151 (COA 1998).

6 If the petitioner presents some shred of evidentiary support of his
7 allegations, the district court must take the petitioner's allegations as true,
8 at least until such time as they are controverted by the State. *Tramel v. State*,
9 92 Idaho 643, 646, 448 P.2d 649, 652 (1986). This is so even if the allegations
10 appear incredible on their face. *Id.* Thus only after the State controverts the
11 petitioner's allegations can the district court consider the evidence. *Drapeau v.*
12 *State*, 103 Idaho 612, 651 P.2d 546 (COA 1982). But in doing so, it must still
13 liberally construe the facts and draw reasonable inferences in favor of the
14 petitioner. *Small*, 132 Idaho at 917, 971 at 1155.

15 if a question of material fact is presented, the district court must conduct
16 an evidentiary hearing to resolve that question. *Small*, 132 Idaho at 331, 971
17 P.2d at 1155. If there is no question of fact, and the state is entitled to
18 judgment as a matter of law, dismissal can be ordered sua sponte, or pursuant to
19 the State's Motion. I.C. 19-4906(b), (c).

20 Statement Of Material Facts In Dispute

21 Wolf in his First Amended Petition for Post-Conviction Relief listed
22 Fourteen (14) Grounds, of which seven (7) of these grounds were ineffective
23 assistance of counsel and six (6) other issues involving due process, illegal
24 search and seizure, and separation of powers doctrine.

25 Respondent filed a Motion for Summary Dismissal in pursuant to Idaho Code

1 § 19-4906(c) "on the basis that, in light of the pleadings, answers, admissions,
2 and the record of the underlying criminal case, the petition fails to raise a
3 genuine issue of material fact. The claims of ineffective assistance of counsel
4 raised are merely conclusory statements without any evidence supporting the
5 generalized claims, or any evidence of actual prejudice to the petitioner." and
6 "Wolf's Brady" claim fails to meet the requirement of Brady v. Maryland, 373 U.S.
7 83 (1963) and its progeny, i.e., and fail to establish a genuine issue of material
8 fact regarding favorable evidence that was exculpatory or impeaching, suppressed
9 by the state willfully or inadvertently, and with resulting prejudice."

10 Upon review of this Court's Order Dismissing Petitioner (hereinafter "Order")
11 this court stated:

12 "As discussed below in his new documents, he attempts to raise entirely new claims
13 without following the proper procedure and without moving the Court to allow him to
14 file a Second Amended Petition. The Court will not consider these new claims."

14 Order, p.2, Lns. 21-24.

15 Wolf has not set forth new claims. Rather, what Wolf did was to take his
16 First Amended Petition for Post-Conviction Relief, and took each Ground and listed
17 it in the Petition from page 3-9, and listed each Ground to correspond with
18 numbers 1-14 listed in the Brief In Support of Petition. (See: Brief, pp.3-4, Lns.
19 1-25, 1-9.) However disjointed Wolf may have made the pleadings submitted to the
20 district court in response to the Court's Orders and Respondents Answer and Motion
21 for Summary Dismissal, Wolf is **pro se**, and therefore however unorthodox he may
22 have presented evidence to demonstrate the facts and issues of material facts in
23 dispute. Wolf hereby consolidates Grounds 2, 8, 9, 10, 12, and 13 and the
24 statements listed in each of those Grounds to include the case citations all under
25 one claim of Defense Attorney's Ineffectiveness under Ground One that is already

1 in the First Amended Petition for Post-Conviction Relief. Ground 14, Ineffective
2 Assistance of Appellate Counsel and all other listed Grounds: 3, 4, 5, 6, 7 and 11
3 remain as is.

4 MATERIAL ISSUES OF FACTS PERTAINING TO WOLF'S GROUNDS FOR POST-CONVICTION RELIEF

5 Detective Craig Durrell with the Ada County Sheriff's Office on August 20,
6 2007, entered a web site named "gay.com." Upon doing so, he created an account on
7 this site. In order for him to do this he was required to do three (3) steps:
8 1) Create Account, 2) Confirm Email, 3) Welcome!. The first step of creating this
9 account requires personnal information that is true, accurate, current and
10 complete at all times. These steps are shown in Petitioner's Exhibit "B", pp.1-3
11 that are attached to Wolf's January 28, 2010 Affidavit of Petitioner Andrew J.J.
12 Wolf. A shown in Exhibit "B" p.1 the first step that has a required field under
13 "My Account Information" is Member name. Here Det. Durrell provided the name of
14 "greenmonsterlm07". He then provided an Email address not once but twice he
15 provided a Email address and Password. He then had stated his Gender to be male
16 and under the required field of "birthdate" he provided a Month , Day and Year
17 that reflected he was 99 years old. He then provided under location the text of
18 "I'm actually 15 and I yes...I know I'm gay! Boise, Idaho" then had the option to
19 provide a ZIP/Postal Code or State/Province, either check that he wanted Exclusive
20 Offers and Newsletters and "Why did you decide to join gay.com today?" and then the
21 requirement of "Verification by typing the characters from the image into the box
22 below, with the box having letters and/or numbers in a box that is in different
23 fonts and type face that you must type exactly correct. The last step on this form
24 is listed under "Terms of Service" where you must click with your mouse in the box
25 and to the right of it it states: "I have read, understand and accept the gay.com

1 Privacy Policy, User Agreement and Community Guidelines." then click the mouse on
2 "continue" (See Exhibit "B", p.2.)

3 The next step for Det. Durrell was to confirm his Email and he was provided
4 the option to do this from page as shown on Exhibit "B", p.3, then open the email
5 from gay.com, click the verification button and then was done registering on
6 gay.com.

7 Det. Durrell when he checked the box regarding the "Terms of Service" he had
8 acknowledged that: "you are certifying that you are 18 years of age or above."
9 (Exhibit "B", p.5, Ln.13-14.) under the Planet Out Community Guidelines. Under the
10 User Agreement he had agreed "to (a) provide true, accurate, current and complete
11 information a prompted by the registration form and (b) maintain and update such
12 information to keep it true, accurate, current, and complete at all times. Exhibit
13 "B", p.12, Lns. 13-15. Under the Network Rules he had agreed "not to use the
14 Network to: "1. ... post,...(a) material that is inaccurate, unlawful, harmful..."
15 (Exhibit "B", p.12, Lns.44-46) and "4. impersonate any person or entity or falsely
16 state or otherwise misrepresent your affiliation with a person or entity; and
17 15. promote or provide instructions or information about how to engage in illegal
18 conduct or commit illegal activities or activities intended to cause disruption to
19 the Network, promote physical harm or injury, or promote any illegal act or act
20 intended to cause harm or disruption to the Network or the Internet in general;
21 (Exhibit "B", p.13.)

22 Wolf was arrested on August 20, 2007, as a result of a internet sting that
23 Det. Durrell and other Ada County Detectives had conducted on gay.com chat room
24 site. Wolf was taken to the Ada County Jail and detained for internet enticement.
25 Ada County Sheriff Detective Patrick L. Schneider provided an Affidavit for a

1 Search Warrant with the aid of Deputy Prosecutor Kai E. Wittwer. Schneider's
2 Affidavit he stated that he needed to seize Wolf's computer and any and all type
3 of hard drives, external storage devices, to include but not limited to, floppy
4 discs, compact discs and zip drives. Further more he had stated "The examination
5 of the computer will therefore extend past the 14-day time frame allowed by the
6 search warrant." As a result of the Affidavit for Search Warrant the Magistrate
7 Court issued a Search Warrant for Wolf's residence and to search any and all
8 Computer Hardware, software, disks, optical disks, notes or documents ect. on
9 August 20, 2007 at 3:49 o'clock pm. and "Return of the Warrant was to be made to
10 the above-entitled Court within 14 days from the date hereof." See Exhibit "BB",
11 p.7 attached to Fourth Affidavit of Petitioner. As a result Ada County Sheriff's
12 Detectives had seized his computers and related equipment and provided a 2 page
13 Property Invoice, See Exhibit "BB", pp. 3-4.

14 Upon Wolf's arrest on August 20, 2007, he was arraigned before Magistrate
15 Judge Kevin Swain on August 21, 2007. The Court determined Wolf was entitled to
16 representation at the state's expense in accordance with I.C. 19-852, et seq.,
17 and the Ada County Public Defenders Office was assigned to represent Wolf (R., pp.
18 88-89.)

19 Wolf appeared for a preliminary hearing on 9/4/2007, where he finally for the
20 first time had met with his assigned Ada County Public Defender Steven A. Botimer.
21 Botimer just prior to appearing in court with Wolf presented a plea agreement to
22 Wolf in that if he waived his preliminary hearing and agreed to plea guilty the
23 state would recommend a sentence of 2 fixed, 13 indeterminate, and probation if
24 psychosexual evaluation (hereinafter "PSE") came back favorable for community
25 based treatment. Wolf refused this offer for he had a prior record and informed

1 Botimer of such, and requested to proceed with the preliminary hearing and further
2 asked Botimer for the Discovery in the case. As a result Botimer had then moved to
3 continue the preliminary hearing until 9/24/2007 which was granted (R.,p.12.)

4 Wolf on or after 9/7/2007, had received a letter dated September 7, 2007 from
5 Botimer with a copy of the police reports so that Wolf could prepare for a
6 preliminary hearing and again conveyed the state's plea offer again. Wolf had
7 provided a copy of these documents in Jan. 28, 2010 Aff. of Petitioner, Exhibit
8 "A", pp.1-35.

9 Botimer had also on 8/23/2007, filed Defendant's request for discovery with
10 the state and court. Wolf has never seen this discovery request nor has he seen
11 anything produced by the state as a result of this request.

12 Wolf, with counsel Steven Botimer, appeared before Judge Swain on 9/24/2007
13 for the preliminary hearing. Botimer had questioned only one witness at this
14 hearing, Detective Craig Durrell from the Ada County Sheriff's Office. Botimer
15 never once asked Durrell how he went about setting up this internet sting
16 operation to include how he had exactly created the profile when he had registered
17 and created the profile for non-existent user greenmonsterlm07, or if he had
18 agreed to any Terms of Use or user agreement when he created this profile.

19 As a result of the preliminary hearing Judge Swain had bound the case over to
20 the district court and it was assigned to Judge Wetherell, and Botimer had passed
21 the case over to another Public Defender, Anthony R. Geddes. Also, Botimer not
22 once had ever met with Wolf at the Ada County Jail or had an investigator meet
23 with Wolf at the Jail in order to conduct a proper interview with Wolf prior to
24 the preliminary hearing with the discovery that he had provided to Wolf, nor did
25 he ever investigate into how the Ada County Sheriff's Detective's set up the sting

1 operation, rather than just accepting the state's version of facts (R.,pp.14-19.)

2 Wolf further requests that this Court take Judicial Notice of the Preliminary
3 Hearing that was done on 9/24/2007 to further support these facts, no transcript
4 has been prepared, pursuant to Rule 201, of the Idaho Rules of Evidence.

5 Wolf had been scheduled for district court arraignment for 10/4/2007 before
6 Judge Mike Wetherell at 9 am (R.,pp.14-19.) Prior to this scheduled hearing
7 Botimer had handed the case over to Anthony R. Geddes, Ada County Public Defender
8 to handle the case before Judge Wetherell. Not once did Geddes come to the Ada
9 County Jail to consult or conduct an interview with Wolf prior to the 10/4/2007
10 hearing. Rather, Geddes without consulting with Wolf filed on October 1, 2007, a
11 Motion to Disqualify Without Cause. This deprived Wolf his own right of choosing
12 whether to disqualify the Judge for Wolf is only entitled to one disqualification
13 without cause under Rule 25(a)(1), of the Idaho Criminal Rules. As a result Judge
14 Wetherell was disqualified without consulting Wolf first and reassigned to
15 this district court with judge copsey assigned to the case and Ada County Public
16 Defender Michael W. Lojek was assigned to represent Wolf (R.,pp.20-21.)

17 Upon Lojek being assigned to the case he had discussions with Wolf several
18 times and Wolf continually attempted to get Lojek to look into how the arrest took
19 place for there was something definately wrong. Lojeck would continually state to
20 Wolf in this regard that all they had to show a jury was that Wolf went on the
21 internet site with the intent to pick up a minor. At no time during September or
22 October 2007 did Lojek attempt to conduct his own investigation into the alleged
23 crime and how it was committed. He only accepted the state's version of facts.

24 Wolf on October 27, 2007, posted bond on the enticement charge. At that point
25 Wolf began to conduct his own research and investigation into his charge in order

1 to assist Lojek in putting together a plausible defense for Lojek would not offer
2 any assistance by having one of his four investigators that was available in his
3 office pursue an investigation based upon the facts and discovery available.

4 Fafa Alidjani, Ada County Prosecuting Attorney, was in possession of the
5 Search Warrant, Affidavit for Search Warrant that were filed on August 20, 2007,
6 and the Return of Warrant that was Filed on August 21, 2007, with a two page
7 property inventory sheet. (Fourth Affidavit of Petitioner, Exhibit "BB".) Also, she
8 was in possession of Detective Durrell's General Report, Supplemental Report and
9 a four page Examination Report 107324 that was prepared by Forensic Examiner Don
10 Lukasik, Detective with the Ada County Sheriff's Office, See State's Discovery pp.
11 8-14 Ada County Case H0701428 or Affidavit of Petitioner, Filed 1-28-10, Exhibit
12 "C", pp.9-15.

13 As a result of these documents that Dep. Prosecutor Fafa Alidjani had she
14 filed a Complaint against Wolf for Possession of Sexual Exploitative Material, a
15 felony, I.C. §18-1507, §18-1507A, and submitted it to a Magistrate Court for a
16 Warrant to be issued for his arrest on October 31, 2007 (R.,pp.69-70.) As a
17 result, Wolf was arrested in covert by Ada County Marshals on October 31, 2007,
18 when he appeared before this court on Case NO. H0701230.

19 As a result of Wolf's new arrest he was taken again to the Ada County Jail
20 and booked and held on a \$50,000 bond. Wolf on November 1, 2007, appeared on Video
21 Arraignment before Magistrate Judge Theresa Gardunia with Ada County Public
22 Defender being Appointed to represent Wolf (R.,pp.67-68.)

23 As set forth in Wolf's Fourth Affidavit of petitioner and Exhibit "BB"
24 attached thereto the Ada County Public Defenders Office received a copy of the
25 Return of Search Warrant, 2 page inventory sheet, Search Warrant and Affidavit for

1 Search Warrant, which they stamped "Recieved NOV 02 2007 ADA COUNTY PUBLIC
2 DEFENDER" in the bottom left portion of page. (See: Fourth Affidavit of Petitioner,
3 Exhibit "BB", p.2.)

4 Wolf had met with his newly appointed Ada County Public Defender, Larry
5 Moore, at the Ada County Jail in a attorney client interview prior to the November
6 15, 2007 Preliminary Hearing. Moore or someone from his office filed a Request for
7 Discovery with the Prosecution. These documents were received by the Ada County
8 Public Defenders Office on November 14, 2007, as indicated by the Stamp that their
9 office uses. (See: Affidavit of Petitioner Filed 1-28-10, Exhibit "C", pp.1-15.)

10 Wolf, in discussions with Defense Counsel Larry Moore, in respects to the new
11 charges, had informed Wolf that it was best to Waive the preliminary hearing and
12 have the matter bound over to district court and then consolidate it with Ada
13 County Case No. H0701230 that was before Judge Copsey.

14 Wolf, at the advise of his defense counsel Larry Moore waived the Preliminary
15 Hearing and the case was bound over to the district court with Judge Ronald J.
16 Wilper assigned to the case (R.,p.75.) Moore then handed Wolf's case file over to
17 Ada County Public Defender Jonathan Loschi. Loschi met with Wolf once prior to the
18 11/20/2007 district court arraignment at the Ada County Jail to discuss the case
19 with him. Wolf had then explained to Loschi that there was another felony charge
20 from the August 20, 2007 arrest that was pending before Judge Copsey's District
21 Court and that defense counsel Lojek had that case and had advised Wolf to have
22 both case's consolidated before both district court. Loschi informed Wolf that he
23 would speak with Lojek regarding this matter.

24 Loschi also in the interview asked Wolf about the images that were found on
25 his computer hard drives on or after 10/2/2007 by Forensic Examiner Detective Don

1 Lukasik. Wolf had told Loschi that he was unaware of these images and asked what
2 they consisted of. Loschi said that they were pretty graphic and never did provide
3 copies of them to Wolf to look at and verify if he had ever seen them before.

4 Wolf and Loschi appeared before the district court with Judge Wilper
5 presiding on 11/20/2007 and Loschi informed the court that he was working on
6 getting the case consolidated with the other felony case. The district court
7 continued the case to 12/4/2007, if it was not consolidated (R.,pp.80-81.)

8 Wolf then had met one more time with Loschi at the jail regarding the 49
9 images that were found on the computer hard drives and discussed them with Wolf as
10 to how they were described in the State's Discovery that they had released to
11 Loschi and a copy provided to Wolf (Exhibit "C", pp.1-15.) Wolf had explained to
12 Loschi the facts regarding the problems he had with his computer regarding viruses
13 and that he had to call his internet provider, Clearwire, about how someone else
14 had gained access to his computer while he was performing other functions on it
15 and sending out mass e-mails. Loschi did not state he would look into the matter
16 or have an investigator or independant forensic examination done.

17 Wolf then appeared a second time before Judge Wilper on 12/4/2007 and the
18 case was continued until 12/18/2007 unless the case was consolidated (R.,pp.80-82.)

19 Wolf also had diligently attempted to obtain a copy of the Search Warrant,
20 Affidavit of Search Warrant, and Return of Warrant prior to this Court's June 2,
21 2010 deadline for filing for he had never received a copy of them. Wolf in the
22 Second Affidavit of Petitioner, pp.3-5, ln.11-25, 11-25, has established the fact
23 he diligently attempted to receive these documents.

24 Wolf's former defense attorney's then on June 3, 2010, one (1) day after this
25 Court's deadline for filing a response, mailed to Wolf the Warrant Documents and

1 Wolf received them on Friday, June 4, 2010. As a result Wolf then immediately
2 prepared a Fourth Affidavit of Petitioner setting fourth the facts regarding these
3 documents and attached them as Exhibit "BB" thereto. Wolf gave to prison officials
4 this Fourth Affidavit of Petitioner on June 7, 2010, to be mailed which was three
5 (3) days prior to this Court's Order of Dismissal. The Fourth Affidavit of
6 Petitioner was file stamped June 10, 2010, as well even though the "mail box rule"
7 applies and it was actually filed on June 7, 2010, proof that prison officials
8 received this on June 7, 2010 is attached hereto as Exhibit "CC", and by this
9 reference incorporated herein as if restated in its entirety.¹

10 1. The District Court Exercised an Abuse of Discretion When it Summarly
11 Dismissed Mr. Wolf's First Amended Petition for Post-Conviction Relief
When There Existed Material Issues of Fact that are In Dispute

12 The district court in the Order dismissing Wolf's Petition stated in part:

13 "Finally, he claims, without identifying what evidence was withheld, the State
14 comitted a Brady violation failing to disclose "exculpatory" evidence. He also
15 does not explain how this unknown evidence would have changed the outcome.
While he alludes to information regarding the use of the social networking site,
he does not explain how this is Brady material."

16 Order, p.3, Lns. 7-11.

17 A. Prosecutorial Misconduct occurred due to the prosecution
18 withholding the information provided to gay.com when creating the
19 user profile account to include the gay.com Privacy Policy, User
Agreement and Community Guidelines when the Ada County Sheriff's
Detectives first created the personal profile

20 i. facts pertaining to claim

21 Wolf has set forth herein facts that set forth facts that deomstrated how
22 Detective Craig Durrell had set up the personal profile on gay.com in order to

23 1

24 Pursuant to the "mail box rule", an inmate's documents are considered to be filed
25 when they are delivered to prison authorities for the purposes of mailing to the
court clerk. Hayes v. State, 143 Idaho 88, 91, 137 P.3d 475, 478 (Ct. App. 2006).

1 operate the sting operation on gay.com, see herein at pp.6-7, Lns. 5-25, 1-21.
2 Wolf has also set forth these facts within his Affidavit of Petitioner Filed on
3 Jan. 28, 2010, and Second Affidavit of Petitioner and there Exhibits attached
4 thereto and the Brief In Support of Petition.

5 **ii. why relief should be granted**

6 The prosecuting attorney had a duty to disclose every aspect of how the Ada
7 County Sheriff's Detectives set up the internet sting on gay.com, including line
8 by line of how they set up the personal page profile and printed page-by-page each
9 of these steps that Wolf has demonstrated took place above herein.

10 The Idaho Court of Appeals in its analysis of a "Brady" violation addressed
11 this matter quite on point in **Queen v. State**, 146 Idaho 502, 198 P.3d 731 (Ct.
12 App. 2008) where it held: "Due process requires all material exculpatory evidence
13 known to the state or in its possession be disclosed to the defendant. **Brady v.**
14 **Maryland**, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196097, 10 L.Ed.2d 215 (1963); **Dunlap**
15 **v. State**, 141 Idaho 50, 64, 106 P.3d 376, 390 (2004). See also I.C.R. 16(a). There
16 are three essential components of a true Brady violation. **Stickler v. Green**, 527
17 U.S. 263, 281-82, 119 S.Ct. 1936, 1948, 144 L.Ed.2d 286 (1999); **Dunlap**, 141 Idaho
18 at 64, 106 P.3d at 390. First, the evidence at issue must be favorable to the
19 accused, either because it is impeaching. **Dunlap**, 141 Idaho at 64, 106 P.3d at
20 390. Next, the evidence must have been suppressed by the state, either willfully
21 or inadvertently. **Id.** Finally, prejudice must have ensued. **Id.** The duty of
22 disclosure enunciated in Brady is an obligation of not just the individual
23 prosecutor assigned to the case, but of all the government agents having
24 significant role in investigating and prosecuting the offense. **State v. Avelar**,
25 132 Idaho 775, 781, 979 P.2d 648, 654 (1999); **State v. Gardner**, 126 Idaho 428, 433

1 885 P.2d 1144, 1149 (COA 1994)." *Queen*, 146 Idaho at 504.

2 The three components set forth by the holdings in *Stickler* that are mentioned
3 above are all met in this case and occurred in Wolf's case at bar. Of these three
4 components they are unquestionably established by the record in this case: 1) the
5 information that was provided on the page he created the account on that required
6 all the personal information, 2) the Terms of Service that included the Privacy
7 Policy, User Agreement and Community Guidelines, and 3) the evidence withheld had
8 prejudiced Wolf due to the fact it made Wolf's guilty plea unintelligent due to the
9 "materiality" of the withheld evidence Wolf would not have chose to plead guilty
10 for it demonstrates a plausible defense that the Ada County Sheriff's Detectives
11 engineered and directed instigating criminal acts which amounted to outrageous
12 governmental conduct.

13 a. The Materiality of the Withheld Evidence

14 There is no question in this case that the state withheld the information
15 that Ada County Sheriff's Detectives withheld the information that was provided on
16 the page he created the account on that required all the personal information and
17 the Terms of Service information in where he agreed to it and the Privacy Policy,
18 User Agreement and Community Guidelines. Nor can there be any question that the
19 information gathered was favorable to Wolf, in that it suggests that Ada County
20 Sheriff's Detectives performed outrageous conduct which is impermissible and could
21 have given Wolf a plausible defense. Thus, the only issue in the present case is
22 whether there is a reasonable probability that the disclosure of the materials
23 would have affected the outcome of the proceedings, i.e. whether they are
24 sufficient to shake one's confidence in the outcome of the proceedings.

25 In seeking to state in somewhat more concrete terms the "reasonable

1 probability" test of materiality as it would apply to the entry of a guilty plea
2 after the prosecution has withheld exculpatory evidence, the U.S. Supreme Court
3 has considered the concept of materiality (or "prejudice" to the defendant) to be
4 the same for claims of withheld evidence as for claims of ineffective assistance
5 of counsel. See, e.g. **Strickland v. Washington**, 466 U.S. at 694, 104 S.Ct. 2068
6 (test for "prejudice" stemming from error of counsel "finds its roots in the test
7 for materiality of exculpatory information not disclosed to the defense by the
8 prosecution") **United states v. Bagley**, 473 U.S. at 682, 105 S.Ct. at 3384 (opinion
9 of Blackmun, J., using the "**Strickland** formulation" in a case involving withheld
10 evidence); **Pennsylvania v. Ritchie**, 107 S.Ct. at 1001 (a withheld-evidence case
11 adopting Justice Blackmun's **Bagley** formulation which included **Strickland's**
12 "sufficient to undermine confidence in the outcome" test). Accordingly, given the
13 parallel standards and the similarities between a plea of guilty and a plea of not
14 guilty, it is useful in the present case to look to the Supreme Court's discussion
15 of materiality in **Hill v. Lockhart**, 474 U.S. 52 (1985), which involved a claim
16 that defendant's decision to enter a plea of guilty was caused by the ineffective
17 assistance of his counsel.

18 In **Hill**, the Court's bottom-line test to determine whether flaws in the
19 performance of counsel were material was stated at follows. "[I]n order to
20 satisfy the 'prejudice' requirement, the defendant must show that there is a
21 reasonable probability that, but for counsel's errors, he would not have pleaded
22 guilty and would have insisted on going to trial". *Id* at 59. As an illustration,
23 the Court indicated that the defendant might meet this test if error-free
24 representation would likely have led counsel to recommend a plea of not guilty:
25 "for example, where the alleged error of counsel is a failure to investigate or

1 'prejudiced' the defendant by causing him to plead guilty rather than go to trial
2 will depend on the likelihood that discovery of the evidence would have led
3 counsel to change his recommendation as to the plea. This assessment, in turn,
4 will depend in large part on a prediction whether the evidence likely would have
5 changed the outcome of a trial. **Id.**

6 In assessing the materiality of the withheld information in the present case
7 the court should focus on whether disclosure of the registration data and exactly
8 what information they had provided by the Ada County Detectives when they logged
9 on to gay.com and created the profile and provided the required data to include an
10 age, of which they provided one of **99 years old**, and the fact that they agreed to
11 the User Agreement, Privacy Policy and Community Guidelines, would have affected
12 Wolf's former counsel's recommendation to him. The plea context, however, requires
13 the broader focus manifested in **Hill's** bottom-line formulation, for the right to
14 decide whether to plead guilty, or not guilty belongs to the defendant, **not to**
15 **counsel**. Counsel indeed recommends, and if disclosure would likely have caused him
16 to alter his recommendation, that likelihood will usually suffice to show
17 materiality. But whatever counsel recommends, it is Wolf who must decide. Thus,
18 even where counsel would likely adhere to his recommendation of a plea of guilty,
19 if there is a reasonable probability that but for the withholding of the
20 information the accused would not have entered the recommended plea but would
21 have insisted on going to a full trial, the withheld information is material
22 within the meaning of the **Brady v. Maryland** line of cases.

23 In assessing the likelihood that either the recommendation of counsel or the
24 decision by Wolf would have been different if the prosecution had not withheld
25 the exculpatory evidence, the test is an objective one, depending largely on the

1 likely persuasiveness of the withheld information. This evidence has been clearly
2 described and that it shows how law enforcement engineered and instigated the
3 conduct that is not allowed due to the User Agreement. There is no way there can
4 be any intent to go on gay.com and engage in sex with a minor when you must be 18
5 years of age or older to be on the site, and that the Detectives provided an age
6 of 99 years old. There is no doubt that with the evidence withheld a not guilty
7 plea would have given a plausible defense to present to a jury seeking how law
8 enforcement engineered and directed the chat and how they lied and gave false
9 information which violated the Terms of Service (Privacy Policy, User Agreement,
10 and Community Guidelines) in order to entice an individual such as Wolf.

11 In sum, Wolf concludes that the withheld information was material within the
12 meaning of the **Brady v. Maryland** line of cases. See also, **Miller v. Angliker**, 848
13 F.2d 1312, 1320-1324.

14 Three other facets of the **Brady** claim deserve mention. First, the state
15 cannot conclude that the withheld information was sufficient to create a reason-
16 able doubt because the state and there Detectives possessed additional evidence
17 that it had foregone presenting in light of the guilty plea. This being the user
18 agreement, privacy policy and community guidelines, they had to agree to in order
19 to access the site in order to conduct a chat. The state is not entitled to seek
20 to minimize the materiality of the withheld information by arguing that it could
21 have produced additional evidence at a fully trial. Having avoided the need to
22 make a full presentation by means of a plea agreement that immunized its
23 presentation from attack, and having achieved the plea agreement only after
24 withholding information that would have **put teeth in the attack**, the state should
25 not be allowed to becloud the court's already hypothetical analysis of likely

1 effect of the withheld information by adverting to other evidence it might have
2 adduced had it not procured the plea agreement.

3 The question whether there is a reasonable probability that counsel's
4 recommendation would have been different had the information been disclosed is not
5 a question of historical fact but rather a mixed question of fact and law resting
6 on an objective evaluation as to the likely persuasiveness of the information.
7 See **Kimelman v. Morrison**, 477 U.S. 365 (1986); **Strickland v. Washington**, 466 U.S.
8 688. Given the nature of the question and the clear directions in **Hill** and
9 **Strickland** that the likely outcome of a trial should be assessed "objectively,
10 without regard for the 'idiosyncracies of the particular decisionmaker'," **Hill** at
11 60-61 (quoting **Strickland**, 466 U.S. at 695), this court should make an objective
12 evaluation of the withheld information would have had on typically competent
13 counsel. Wolf's **Brady** claim has merit in respects to the guilty pleas being
14 sufficiently unintelligent and invalidate them.

15 Lastly, the "duty of disclosure enunciated in **Brady** is an obligation of not
16 just the individual prosecutor assigned to the case, but of all the government
17 agents having a significant role in investigating and prosecuting the offense."
18 **Gardner**, 126 Idaho at 433, 885 P.2d at 1149, See also **Kyles v. Whitley**, 514 U.S.
19 419, 437, 115 S.Ct. 1555, 1567, 131 L.ed.2d 490 (1995)(concluding that "the
20 individual prosecutor has a duty to learn of any favorable evidence known to
21 others acting on the governments behalf in the case, including the police")
22 (emphasis added). Citing **Queen v. State**, 146 at 502.

23 Based upon the foregoing, Wolf's guilty pleas must be vacated

24 //

25 //

1 **b. Outrageous Government Conduct**

2 Based upon the Affidavits and their Exhibits and foregoing facts herein, Wolf
3 has demonstrated a plausible defense that counsel had an option to utilize with
4 evidence that the prosecution and law enforcement had withheld. It is clear that
5 law enforcement engineered and implemented a sting operation that was outside
6 the gay.com Terms of Service (Privacy Policy, User Agreement and Community Guide-
7 lines) on gay.com which could snare individuals without intent to commit unlawful
8 acts.

9 It is well established that government agents may approach, investigate and
10 entice individuals already engaged in or contemplating criminal activity. **See,**
11 **e.g. Untied States v. Emmert**, 829 F.2d 805, 812 (9th Cir. 1987); **United States v.**
12 **O'Connoer**, 737 F.2d 814, 817-18 (9th Cir. 1984), **cert denied**, 469 U.S. 1218, 105
13 S.Ct. 1198, 84 L.Ed.2d 343 (1985). The extent of the government's participation is
14 not, however, unlimited. Where undercover agents or informers engineer and direct
15 the criminal enterprise from start to finish, due process prevents the conviction
16 of even a predisposed defendant. **United States v. Citro**, 842 F.2d 1149, 1153 (9th
17 Cir. 1988). In such circumstances, the conduct of the government is considered "so
18 shocking and so outrageous as to violate the universal sense of justice." **United**
19 **States v. Ramirez**, 710 F.2d 535, 539 (9th Cir. 1983)(quoting **United States v.**
20 **Ryan**, 548 F.2d 782, 789 (9th Cir. 1976), **cert. denied**, 430 U.S. 965, 97 S.Ct. 1644
21 52 L.Ed.2d 356 (1977)).

22 In their zeal to enforce the law, however, Govnerment agents may not
23 originate a criminal design, implant in an innocent person's mind the disposition
24 to commit a criminal act, and then induce commission of the crime so that the
25 Government may prosecute. **Sorrells v. United States**, 287 U.S. 435, 442, (1932);

1 **Sherman v. United States**, 356 U.S. 369, 372 (1958). The Government here induced
2 an individual to break the law and the defense of outrageous government conduct
3 is at issue, as it was in this case the prosecution must prove that Wolf was
4 predisposed (the intent) to commit the criminal act when entering the chatroom and
5 with knowledge that everyone is to be 18 years of age or older with the
6 possibilities of fantasy or role playing occurring, no intent can be proven by
7 the government. When the prosecution withheld the page by page registration data
8 that was entered and the Terms of Service (Privacy Policy, User Agreement,
9 Community Guidelines) that were agreed to when signing up, they hindered and
10 impeded a plausible defense to be used before a jury trial.

11 2. Summary Dismissal of Mr. Wolf's Sixth Amendment Ineffective Assistance
12 of Counsel Claim is in Error Because the Affidavits along with the
13 Record of the Criminal Case has Established a Prima Facie Showing
14 Thereof.

14 i. facts pertaining to claims

15 Mr. Wolf alleged that his defense attorney's were ineffective for their
16 overall performance fell below the Sixth Amendment standard, failed to conduct a
17 proper investigation by obtaining the necessary services in order to prepare for
18 a preliminary hearing, and lastly failing to move to dismiss both charges and to
19 suppress a search of Wolf's computer and related equipment with an expired search
20 warrant due to their ignorance of the facts and relevant law.

21 Wolf had supported these claims against his defense attorney's with
22 Affidavits, Exhibits and the underlying criminal record along with a Brief
23 In Support of Petition. Wolf also has compiled all the facts herein as well.
24 See pp.6-14, Lns.5-25, 1-9.

25 //

1 ii. why relief should be granted

2 The substantive federal law is well-established. Under **Strickland v.**
3 **Washington**, 466 U.S. 688 (1984), Wolf must demonstrate both that his counsel's
4 representation was deficient, i.e., that it fell below an objective standard of
5 reasonableness," and that the deficiency was prejudicial. **Strickland**, 466 U.S. at
6 687-88, 692. To show prejudice, Wolf must only demonstrate that "there is a
7 reasonable probability that, but for counsel's unprofessional errors, the result
8 of the proceeding would have been different. A reasonable probability is a
9 probability sufficient to undermine confidence in the outcome." *Id.* at 694. And,
10 while a counsel's choice of conducting cross examination of the State's witness at
11 a preliminary hearing will be deferred to as a matter of trial strategy, an
12 exception applies in cases "where a decision is made upon a basis of inadequate
13 preparation, ignorance of the relevant law or other shortcomings capable of
14 objective evaluation. **Howard v. State**, 126 Idaho 231, 233, 880 P.2d 261, 263 (Ct.
15 App. 1994); **Giles v. State**, 125 Idaho 921, 924, 877 P.2d 365, 368 (1994), **cert**
16 **denied** 513 U.S. 1130, 115 S.Ct. 942 (1995).

17 Once a petitioner has alleged facts which if true would constitute deficient
18 performance the legal presumption dissolves. Wolf, pleads a **prima facie** showing of
19 ineffective assistance of counsel because it is well-established law that
20 inadequate preparation by defense counsel may violate the Sixth Amendment. **State**
21 **v. Tucker**, 97 Idaho 4, 10, 539 P.2d 556, 562 (1975); **see also, Pompilla v. Beard**,
22 545 U.S. 374 (2005); **Williams v. Taylor**, 529 U.S. 362, 396 (2000) (unreasonable
23 failure to conduct thorough investigation); **see also, ABA STANDARDS FOR CRIMINAL**
24 **JUSTICE**, The defense function, 4-4.1 (3d ed. 1993) (**emphasis added**).

25 //

1 A. Wolf was prejudiced by the Ada County Public Defenders Overall
2 Deficient Performance

3 i. facts pertaining to argument

4 Wolf had alleged in his First Amended Petition that his overall defense
5 attorney's representation fell below the level of representation required by the
6 Sixth Amendment of the United States Constitution for those, such as Wolf, who
7 cannot afford counsel in its criminal courts.

8 Wolf has supported this claim with Affidavits, Exhibits and the underlying
9 criminal record, along with a Brief In Support of Petition and the facts set forth
10 herein on pp.6-14, Ln.5-6, 1-9 of which all show his defense attorney's errors
11 and omissions have reflected a failure to exercise the skill, judgment and
12 diligence of a reasonably competent attorney acting as a diligent conscientious
13 advocate would not have made.

14 Despite this Court's ruling that the National Legal Aid Defenders Association
15 Report is hearsay, it falls under the "hearsay exception" as pointed out in Wolf's
16 Objection which was filed with this motion. This Report was prepared at the
17 request of the Idaho Criminal Justice Commission (CJC) who authorized the NLADA to
18 conduct an evaluation of Idaho's adult trial-level services, under a limited grant
19 from the Open Society Institute. Being that the CJC is an Idaho State Governmental
20 Agency, authorized the NLADA to conduct the evaluation and by the Idaho Juvenile
21 Justice Commission. This evaluation report is a "Public Record" and therefore is
22 relevant evidence and the hearsay exception applies.

23 The NLADA Report details how the Ada County Public Defender's Office's
24 overall performance fell below the standard required by attorney's under the Sixth
25 Amendment of the Constitution of the United States. This alone shows that the

1 cumulative impact of Wolf's defense attorney's deficiencies prejudiced his defense.
2 In addition to finding prejudice from individual deficiencies are cumulatively
3 prejudicial.

4 ii. why relief should be granted

5 Wolf, has set forth the cornerstone of his ineffective assistance of counsel
6 claims that are before this district court with the facts set forth herein and in
7 the Affidavits, Exhibits and other records demonstrate cause and prejudice in
8 Wolf's case.

9 The Sixth Amendment to the United States Constitution, made applicable to the
10 State's through the Fourteenth Amendment, guarantees that in all criminal
11 prosecutions the accused shall have "the assistance of counsel for his defense."
12 In the landmark case of **Gideon v. Wainwright**, 372 U.S. 335 (1963), the Supreme
13 Court established that the Sixth and Fourteenth Amendments require states to
14 provide counsel for all those who have been charged with criminal wrongdoing by the
15 state and are unable to afford private counsel. The Idaho Constitution similarly
16 guarantees each criminal defendant the right to have counsel in all criminal
17 proceedings. **Idaho Constitution Art. 1, Sex. 13.**

18 The right to assistance of counsel is the right to effective assistance of
19 competent counsel. As the United States Supreme Court has repeatedly made clear,
20 "inadequate assistance does not satisfy the Sixth Amendment right to counsel made
21 applicable to the states through the Fourteenth Amendment." **Cuyler v. Sullivan**,
22 466 U.S. 335 (1980). "The right to effective assistance of counsel is thus the
23 right of the accused to require the prosecution's case to survive the crucible of
24 meaningful adversarial testing." **United States v. Cronin**, 466 U.S. 648, 656 (1984).

25 The Fourteenth Amendment to the United States Constitution provides that "no

1 state shall make or enforce any law which shall... deny to any person within its
2 jurisdiction the equal protection of the laws." A state cannot, therefore,
3 maintain a criminal justice system that has a racially disparate impact on a
4 minority group and uses systems or procedures that are susceptible to abuse. See
5 generally, **Baston v. Kentucky**, 476 U.S. 79 (1986).

6 The constitutional obligation to provide indigent defendants, such as Wolf,
7 with adequate counsel rests with the state. **Gideon**, 372 U.S. 335 (1963). Under
8 this constitutional mandate, the State of Idaho is required to ensure that defense
9 counsel for Wolf, has the tools to engage actively and meaningfully in the
10 adversarial process so that his decisions, judgments and punishments are rendered
11 fairly and accurately. That constitutional mandate has not been met and has been
12 clearly demonstrated by the NLADA's Report (Exhibit "R"), in respects to the Ada
13 County Public Defenders Office in falling well below that of what the Sixth
14 Amendment of our Constitution requires for representation of a defendant such as
15 Wolf.

16 The State of Idaho has abdicated this constitutional duty to each of Idaho's
17 44 counties by delegating the responsibility for funding and administering
18 services within their respective jurisdictions. **Idaho Code Sec. 19-859, et seq.**

19 The state has done nothing to ensure that Ada County has either sufficient
20 funding or adequate policies, programs, guidelines and other essential resources
21 in place to guarantee Wolf is provided effective assistance of counsel as mandated
22 by the United States Constitution, and Idaho Constitution.

23 Pursuant to Idaho Statue, Ada County was required to satisfy Idaho's
24 Constitutional duty to operate a public indigent legal defense system that
25 provided Wolf who was charged with two felony crimes with the effective assistance

1 of counsel. The NLADA's Report and the portions pertaining to the Ada County
2 Public Defenders Office clearly demonstrates that through the official actions of
3 the Board of County Commissioners (the "Board"), has aided Alan Trimings and his
4 Office in failing to provide adequate funds for indigent legal defense for Wolf
5 and by failing to protect the independence of the public defender's office on
6 behalf of Wolf. The time that the NLADA performed their observations was during
7 the time of Wolf's representation which was August 2007 to February 2008.

8 The NLADA Report further demonstrates that the State of Idaho has breached its
9 constitutional duty to provide effective assistance of counsel by abdicating such
10 responsibility to Ada County with no fiscal or administrative oversight.

11 The State of Idaho has also violated the equal protection rights of Wolf by
12 enacting a public defender delivery system which disproportionately deprived him
13 of his constitutional rights to due process and assistance of counsel that is
14 equal to or above that of the Sixth Amendment. The NLADA has found that Idaho, to
15 include Ada County, falls below the minimum standards of the Sixth Amendment in
16 their evaluation, as well as the American Bar Associations Ten Principles for a
17 Public Defense Delivery System.

18 Wolf has shown that under this claim that he was denied his constitutionally
19 guaranteed right to the effective assistance of counsel when his defense lawyers
20 failed to adequately represent him. The big question is whether Wolf has applied
21 the rule of law that was clearly established at the time of his conviction became
22 final. That question is easily answered because the merits of this claim are
23 squarely governed by the United States Supreme Courts holding in **Strickland v.**
24 **Washington**, 466 U.S. 668, 104 S.Ct. 2052 (1984), among other holdings in this
25 regard.

1 B. Wolf's defense attorney's were ineffective in failing to conduct a
2 proper investigation by obtaining the necessary services in order
3 to prepare for a preliminary hearing and pretrial.

4 i. facts pertaining to claim

5 a. deficient performance

6 Here, defense attorney's failure to conduct any type of investigation prior
7 to the preliminary hearings was a way of stating that they accepted the state's
8 version of facts in respects to Wolf's charges.

9 These charges called for an investigator qualified in the field pertaining to
10 the crimes in any and all aspects. Wolf's facts that he has set forth in this
11 motion as well as those Affidavits, Exhibits, underlying criminal record should
12 have led counsel to the investigator who would have provided a plausible defense
13 in a court of law, rather than Wolf being coerced into pleading guilty due to his
14 defense attorney's failure to conduct any reasonable form of an investigation.

15 The general rule that courts will not attempt to second-guess counsel's
16 strategic and tactical choices does not apply to counsel's decisions that are the
17 result of inadequate preparation, ignorance of the relevant law, or other
18 shortcomings capable of objective evaluation. **State v. Elison**, 135 Idaho 546, 551,
19 21 P.3d 483, 488 (2001); see also **Kimmelman v. Morrison**, 477 U.S. 365, 385 (1986)
20 (counsel's decision based on ignorance of the law was unreasonable).

21 Because of counsel's decisions not to conduct any type of investigation into
22 the two crimes Wolf was charged with to provide a plausible defense in a court of
23 law was not a strategic choice, it is not entitled to deference. In failing to
24 offer available funds to conduct a full and proper investigation helpful to Wolf,
25 counsel's performance fell measurably below the performance ordinarily expected of
26 fallible lawyers.

1 b. prejudice

2 In Wolf's attorney's failure to obtain an expert to investigate his plausible
3 defense in regards to how you must create an account on gay.com, along with
4 verifying that he had in fact called his internet provider, Clearwire, in regards
5 to someone either using remote access to access or hijacked his IP address to make
6 use of his computer remotely has prejudiced Wolf. The use of this qualified expert
7 to do this would have aided Wolf and his Attorney's in his defense. It is clear
8 by the facts that Wolf has set forth facts which demonstrate that his defense
9 attorney's are not computer experts and lack the knowledge and skill to conduct
10 an investigation into this type of crime Wolf was charged with, they are lawyers.

11 1. Necessary Services to Conduct an Investigation

12 Wolf was determined under Idaho Code Section 19-852 et. seq. he was entitled
13 to counsel. As such, Wolf was also entitled to be provided with the necessary
14 services and facilities of representation (including investigation and other
15 preparation) as set forth in Idaho Code Sec. 19-852(2). Wolf has demonstrated that
16 this was necessary.

17 This statute was adopted by the Idaho Legislature nearly twenty years prior
18 to the United States Supreme Courts ruling in **Ake v. Oklahoma**, 470 U.S. 68, 105
19 S.Ct. 1087 (1985). The statute recognizes that there are cases where a criminal
20 defendant's right to a fair trial may be jeopardize unless there is access not
21 only to an attorney, but also to certain specialized aid in the preparation of a
22 defense. **State v. Olin**, 648 P.2d 203, 206 (1982).

23 Wolf's defense attorney's acceptance of the state's disclosure of discovery
24 without being an advocate for petitioner in seeking the necessary services of an
25 independent computer consultant regarding how internet chat sites operate as well

1 as how one gets on the social networking site of gay.com and creates a profile.
2 Also, an independant computer consultant for Wolf was justified due to the
3 forensic examination that was performed on Wolf's computer hard drives as Wolf had
4 described in the Jan. 28, 2010 Affidavit of Petitioner, pp.13-18, Ln.11-25, 1-14,
5 clearly shows that he was deprived of a proper investigation and necessary
6 services in order to show a plausible defense and prove his innocence which
7 deprived Wolf of his fundamental fairness embodied in the Due Process Clause.

8 Wolf has articulated that the provision of assistance at public expense where
9 it was necessary for a fair preliminary hearing and a opportunity to conduct a
10 proper investigation for a proper defense if bound over for felony proceedings.
11 Defense attorney's for Wolf willingness to accept the government's version of
12 facts because they relied on the government's version of facts, and not based on
13 their own reasonable investigation, calls their representation in serious question
14 of inadequacy and deprived Wolf of a plausible defense constitutes ineffective
15 assistance of counsel. See U.S. v. Matos, 905 F.2d 30 (2nd Cir. 1990); Goodwin v.
16 Balkcom, 684 F.2d 794 (11th Cir. 1982).

17 Wolf has clearly demonstrated a prima facie showing in regards to this matter
18 that his defense attorney's failed to fulfill their obligation to conduct a
19 thorough investigation of Wolf's relevant discovery and other documents prior to
20 the preliminary hearings and pre-trial hearings that their errors and omissions
21 have reflected a failure to exercise the skill, judgment and diligence of a
22 reasonably competent criminal defense attorney. The errors were those that a
23 reasonably competent attorney acting as a diligent concientious advocate would not
24 have made.

25 //

26 MOTION TO ALTER OR AMEND
Case No. CV PC 2010-1695

1 C. Wolf's defense attorney's were ineffective in failing to move to
2 dismiss both charges due to the prosecutions misconduct and move
3 to suppress a search of Wolf's computer hard drives and other
4 electronic storage data with a expired search warrant that his
5 defense attorney's were in possession of along with the requested
6 discovery, which caused Wolf to be coerced into pleading guilty
7 pursuant to a plea agreement offered by the prosecution that was
8 not knowing, intelligent or voluntary.

9 i. facts pertaining to claim

10 Mr. Wolf has alleged within his First Amended Petitioner that his defense
11 attorney's were ineffective for failing to suppress an illegal search on
12 his residence and on his computers in two separate claims before the Court.
13 As this Court has provided a copy of search warrant documents with its June 10,
14 2010, and therefore will waive Ground 5 that was set forth in the First Amended
15 Petition, and will waive only the portion of Ground 8 in respects to ineffective
16 assistance of counsel for failing to move to suppress the illegal search on his
17 residence. The last part of Ground 8 in respects to ineffective assistance of
18 counsel for failing to move to suppress an illegal search on his hard drives and
19 computers remains in place for it was done with an expired warrant as Wolf has
20 set forth in the Affidavit of Fourth Petitioner and its Exhibits.

21 As set forth herein pp.6-14, Lns.5-6, 1-9 and Wolf's Affidavits and Exhibits
22 along with the underlying criminal record, Wolf has set forth facts that entitle
23 him to the relief of vacating the sentences and dismissing the charge of
24 possession of sexually exploitative material due to the prosecutions endeavor to
25 misrepresent the facts in open court for her failure to conduct a comprehensive
26 review of relevant documents in relation to this charge. Her failure to do so
demonstrates in a best case scenario prosecutor misconduct or at least prosecution
error due to Wolf's defense attorney's ineffectiveness in not moving to dismiss

1 the charge due to an expired warrant was used to obtain this second charge that
2 was filed on October 31, 2010.

3 Upon Wolf's arrest on August 20, 2010, the Ada County Sheriff's Detectives
4 went to the Ada County Prosecuting Attorney's Office and with the aid of Deputy
5 Prosecutor Kai E. Wittwer submitted an Affidavit for Search Warrant (See Fourth
6 Affidavit of Petitioner, Exhibit "BB", p.8-13) and obtained a Search Warrant on
7 August 20, 2007 at 3:49 o'clock, pm. The return to the Warrant was to be made to
8 the above-entitled Court within 14 days from this date.

9 As a result of the Warrant being issued, Ada County Sheriff's Detective's
10 conducted a search of Wolf's residence and seized all of his computer's and
11 related equipment and storage disks and submitted to the Court issuing the Warrant
12 a two page Property Inventory of the items seized attached to the Return of Search
13 Warrant, Exhibit "BB", pp.2-4.

14 Being that the Search Warrant was issued on August 20, 2007 at 3:49 pm it was
15 good thru September 3, 2007 at 3:50 pm.

16 On October 2, 2007, 29 days after the Search Warrant had **expired** Forensic
17 Examiner Don Lukasik, a Ada County Sheriff's Detective, was instructed by Det.
18 Craig Durrell to conduct a forensic examination on the submitted evidence that was
19 seized on August 20, 2007 from Wolf's residence and **search** for evidence of chat
20 and **search** for evidence of child pornography. Lukasik performed these two searches
21 on October 2, 2007 and found evidence of chat that was in direct relation to
22 Wolf's charge in Ada County Case No. H0701230 and 49 images in regards to Case No.
23 H0701428.

24 As a result of these searches with an **expired warrant** due to the information
25 and data that was found on October 2, 2007, Deputy Prosecutor Fafa Alidjani went

1 before a magistrate court on October 31, 2007, and presented all of the evidence
2 that was set forth in Affidavit of Petitioner, Filed Jan. 28, 2010, Exhibit "C",
3 pp. 1-15, and got the Magistrate Judge to sign the Complaint against Wolf and
4 issue a Warrant for his arrest with an increased bond of \$50,000 when Wolf was
5 already out on \$25,000 Bond (R., pp.69-70.)

6 Wolf's defense attorney's on November 2, 2007, had received a complete copy
7 of the Affidavit for Search Warrant, Search Warrant and Return of Search Warrant
8 with a 2 page property inventory sheet. On November 14, 2007, just **one day** prior
9 to Wolf's Preliminary Hearing Wolf's defense attorney's received a copy of the
10 Response to the Request for Discovery which contained the Forensic Examiner, Don
11 Lukasik, Report in where he had stated he wrote: "On 10/02/07, Detective Craig
12 Durrell requested that a forensic examination be conducted on the submitted
13 evidence. Detective Durrell specifically requested the following: Search for
14 evidence of chat. Search for evidence of child pornography." See: Exhibit "C",
15 p.12.

16 **ii. why relief should be granted**

17 Wolf argues that he received ineffective assistance from his defense
18 attorney's because not one of the three who represented Wolf on Ada County Case No.
19 H0701428 had properly reviewed and motioned the court to dismiss the charges due
20 to a search being conducted on 10/2/2007 with a **expired search warrant.**

21 In a post-conviction proceeding challenging an attorney's failure to pursue
22 a motion in the underlying criminal action, the district court may consider the
23 probability of success of the motion in question in determining whether the
24 attorney's inactivity constituted incompetent performance. **Boman v. State**, 129
25 Idaho 520, 526, 927 P.2d 910, 916 (COA 1996). Where the alleged deficiency is

1 is counsel's failure to file a motion, a conclusion that the motion, if prusued,
2 would not have been granted by the trial court, is generally determinative of both
3 prongs of the **Stickland** test. **Boman**, 129 Idaho at 526, 927 P.2d at 916, quoting
4 **Piro v. State**, 146 Idaho 86, 89, 190 P.3d 905 (COA 2008).

5 In this case, Wolf is arguing he recieved ineffective assistance of counsel
6 for his defense attorney's failure to dismiss both charges due to prosecution
7 misconduct and/or error based upon Fourth Amendment grounds on a motion to supress.
8 Therefore, a conclusion that the motion would have been denied and the appeal
9 affirmed is determinative of Wolf's ineffective assistance of counsel claims.

10 The Fourth Amendment prohibition of unreasonable searches protects from
11 governmental intrusion only those places and things which an individual has a
12 legitimate expectation of privacy. **Oliver v. United States**, 466 U.S. 170, 177, 104
13 S.Ct. 1735, 1740-41 (1984); **Smith v. Maryland**, 442 U.S. 735, 740, 99 S.Ct. 2577,
14 2580 (1979); **State v. Morris**, 131 Idaho 562, 565, 961 P.2d 653, 656 (COA 1998). A
15 legitimate expectation of privacy requires that an individual, by his or her
16 conduct, has exhibited a subjective expectation of privacy in the searched
17 premises or the item seized and that the expectation is objectively reasonable.
18 See generally **Smith**, 442 U.S. at 740, 99 S.Ct. 2577; **Katz v. United States**, 389
19 U.S. 347, 361, 88 S.Ct. 507 (1967)(harlan, J., concurring); **United States v.**
20 **Taketa**, 923 F.2d 665, 669, (9th Cir.1991); **State v. Shearer**, 136 Idaho 217, 222,
21 30 P.3d 995, 1000 (COA 2001).

22 A defense counsel, such as Wolf's, who believes that the government will
23 seek to use at trial evidence that was illegally obtained should file a motion to
24 suppress as provided in **Rule 5.1(b) and Rule 12, of the Idaho Criminal Rules. See:**
25 **Rule 41(f), ICR.**

1 Motions to suppress are generally based upon evidence that was obtained
2 directly or indirectly through government violation of the Fourth, Fifth or Sixth
3 Amendments may not be used in the prosecutions' case-in-chief at trial.

4 In this matter before the district court Wolf's argument is that **three (3)**
5 of his defense attorneys were ineffective in failing to conduct a proper
6 investigation and as a result of investigation and as a result of such was a
7 direct failure on their part to file a motion to suppress an illegal search.

8 Wolf has set forth material issues of facts in his Third and Fourth
9 Affidavits with exhibits "AA" and "BB" which clearly have demonstrated that
10 when defense attorney Moore was assigned to Wolf's case after video Arraignment
11 on November 1, 2007, was in possession of the Search Warrant Documents (Exhibit
12 "BB") **14 days prior** to the Preliminary Hearing. It is clear that he had time to
13 read and review them to ensure that a valid Warrant was issued and executed as
14 well as all the searches that were conducted prior to the November 15, 2007,
15 Preliminary Hearing.

16 Moore, or his office, was in direct possession of the State's Discovery that
17 they sent to their office on November 14, 2007, as indicated by the "STAMP" they
18 used to receive documents (Exhibit "C") **1 day prior** to the Preliminary Hearing that
19 Moore waived. Had he properly reviewed these documents, Moore would have
20 discovered that the search for chat and child pornography was done **29 days** after
21 the **WARRANT EXPIRED**. It is clear that Moore in representing Wolf committed errors
22 and omissions that have reflected a failure to exercise the skill, judgment and
23 diligence of a reasonably competent criminal defense attorney. The errors were so
24 flagrant that this Court should conclude that it resulted from neglect and
25 ignorance of the relevant law rather from informed professional deliberation of

1 a competent attorney. **Howard v. State**, 126 Idaho 231, 233, 880 P.2d 261, 263 (COA
2 1994); **Giles v. State**, 125 Idaho 921, 924, 877 P.2d 365, 368 (1994) **cert denied**
3 513 U.S. 1130, 115 S.Ct. 942 (1995).

4 Moore then had Wolf waive the Preliminary Hearing and then passed the case
5 off to defense attorney Loschi for district court proceedings. Again, based upon
6 the foregoing facts set forth with Moore, Loschi had from November 15, 2007 to
7 December 12, 2007, to move to suppress the illegal search due to an **expired**
8 **warrant** for 19 days before he had the case consolidated with defense attorney
9 Lojek.

10 It is clear based upon the facts and exhibits that Wolf has provided herein
11 in these post-conviction proceedings that the only Discovery that they had
12 provided to Wolf was only those documents contained in the two groups that the
13 State had provided to his defense attorney's on August 31, 2007, (Exhibit "A") and
14 November 14, 2007, (Exhibit "C"). Within these documents Wolf never had a copy of
15 the Search Warrant Documents until this Court had provided a copy of them with its
16 June 10, 2010 Order and the copy that Wolf had received from his defense attorney's
17 on June 4, 2010, and included as Exhibit "BB" in his Fourth Affidavit. Therefore
18 Wolf can state that he truthfully answered question 18 of the Copsey Guilty Plea
19 Form (R.,p.37) in respects to having reviewed the evidence provided to him by his
20 attorney during discovery.

21 Defense attorney's for Wolf, willfully withholding the Search Warrant
22 documents throughout the entire criminal court proceedings and these proceedings,
23 where Wolf diligently attempted to obtain them, until June 3, 2010, **one day** after
24 this court's deadline is nothing more than a combined effort two bulldog (coerced)
25 Wolf into a guilty plea, along with defense attorney Lojek's being ineffective for

1 failing to research the controlling law on the validity of the warrant before
2 telling wolf to plead guilty along with his failure to investigate the crime has
3 rendered guilty plea ineffectiveness under Hill v. Lockhart, 474 U.S. 52 (1985),
4 among others.

5 Wolf has clearly demonstrated that his defense attorney's shortcomings and
6 lack of visual inspection of the dates and times of the relevant documents that
7 pertain to the Search Warrant and Forensic Examination demonstrates ineffective
8 assistance of counsel for failing to suppress a search with a **expired warrant**, and
9 renders Wolf's guilty pleas involuntary, unknowing and unintelligent and requires
10 this court to vacate the guilty pleas and remand the matter back for further
11 proceedings for Wolf would have prevailed on a suppression motion had his defense
12 attorney's not been ineffective.

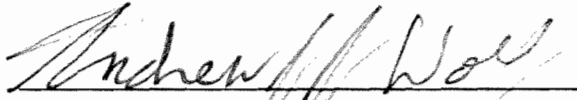
13 The Petition, Affidavits and Exhibits, taking the allegations all reasonable
14 inferences in Mr. Wolf's favor, established a prima facie showing that the defense
15 attorney's failure to investigate, request necessary services to conduct a proper
16 investigation with the necessary services to do such coerced Wolf to plead guilty,
17 and that the pleas were not knowing, voluntary or intelligent and was due to
18 their inadequate trial preparation and thus not the type of strategic decision
19 under **Strickland**.

20 CONCLUSION

21 For the reasons set forth in this Motion to Alter or Amend as well as the
22 previous pleadings on the record this court must vacate its June 10, 2010 Order
23 Dismissing Wolf's Petition for Post-Conviction Relief, and order an evidentiary
24 hearing take place with all of Wolf's former defense attorney's being present
25 to be examined by Wolf and this Court in order to make a proper determination

1 on the facts that Wolf has shown herein that are in dispute, and for any further
2 relief that is predicated by law.

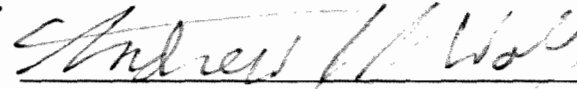
3 DATED JUNE 23rd 2010.

4 
5 Andrew J.J. Wolf, Petitioner pro se

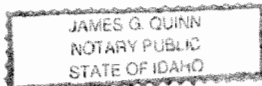
6
7 VERIFICATION

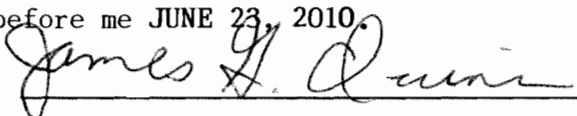
8 STATE OF IDAHO)
9) ss.
County of Ada)

10 ANDREW J.J. WOLF, being sworn under oath deposes and says, that he is the
11 party in the above-entitled matter and, that all statements are true and correct
to the best of his knowledge and belief.

12 
13 Andrew J.J. Wolf, Petitioner pro se

14 SUBSCRIBED, SWORN and AFFIRMED to before me JUNE 23, 2010.



17 
18 Notary Public for Idaho
Commission expires: 9/10/2013

19 CERTIFICATE OF MAILING

20 I HEREBY CERTIFY that on JUNE 23, 2010, I mailed an original to the foregoing
21 Clerk of the District Court, and a true and correct copy to Respondents Counsel
22 by handing over to prison officials to be mailed via the U.S. Mail postage prepaid
addressed to:

23 FAFA ALIDJANI
24 Dep. Prosecuting Attorney
25 200 W. Front St. RM 3191
Boise, ID 83702-7300

26 
Andrew J.J. Wolf, Petitioner pro se

MOTION TO ALTER OR AMEND
Case No. CV PC 2010-1695

RESOURCE CENTER PRIVILEGED MAIL LOG

WOLF

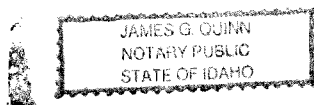
35408

<i>Date Received</i>	<i>Date Mailed</i>	<i>Addressee</i>
06/07/10	06/07/10	DENNIS BENJAMIN ATTORNEY AT LAW P.O. BOX 2772 BOISE ID
06/07/10	06/07/10	ADA CO DIST. COURT 200 W. FRONT ST BOISE ID
06/07/10	06/07/10	ADA CO. PROSECUTOR FAFA ALIDJANI 200 W. FRONT ST. BOISE ID

State of Idaho

County of Ada

On this 23rd day of June, 2010, I certify the above is a true, exact, and complete copy of the Resource Center's entry into the privileged mail database.



James G. Quinn

NOTARY PUBLIC for Idaho

Commission Expires: 9/10/13

EXHIBIT "CC"
00689

RECEIVED

JUN 28 2010

Ada County Clerk

NO. 1140 FILED
A.M. 1140 P.M.

JUN 28 2010

J. DAVID NAVARRO, Clerk
By A. GARDEN

1 Andrew J.J. Wolf
#35408, ICC
2 Post Office Box 70010
Boise, Idaho 83707

3 Petitioner,
4

5 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
6 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

7 ANDREW J.J. WOLF,
8 Petitioner,
9 -vs-
10 STATE OF IDAHO,
11 Respondent.
12

oOo

) Case No. CV-PC-2010-1695

)
) OBJECTION TO ORDER SUMMARILY
) DISMISSING PETITION FOR
) POST-CONVICTION RELIEF

13 COMES NOW, Andrew J.J. Wolf, Petitioner *pro se*, who in accordance
14 with Rule 12, of the Idaho Rules of Civil Procedure, brings before this district
15 court an objection to the June 10th 2010 Order Summarily Dismissing Petition for
16 Post-Conviction Relief, for the reasons set forth more fully below.

17 This court in its June 10th 2010, Order Summarily Dismissing Wolf's Petition
18 for Post-Conviction Relief on page 15, Lines 7 - 21 has stated:

19 "Some of the evidence attached to the various Affidavits, however, is not admissible
20 or is irrelevant. Articles regarding the Public Defenders' office, low income
21 representation, syphilis, and the Static-99 Coding Rules are inadmissible hearsay,
22 and Wolf presented no expert witness who can testify as to their contents or
23 provide admissible opinion. Wolf is not an expert on syphilis or the Static-99
24 and cannot opine about these documents. In addition, as to alleged errors in
25 Dr. Johnston's application of the Static-99, the Court strikes any reference to any
26 alleged conversations Wolf claims he had with Collin Young, Charles Fletcher, Dale
Damron, or Joan Sheean. This is inadmissible hearsay and will not be considered. In
addition, Wolf's own interpretation of the Static-99 is irrelevant.

Furthermore, articles regarding the Public Defenders' office are irrelevant to
whether the representation Wolf actually received fell below an objective standard.

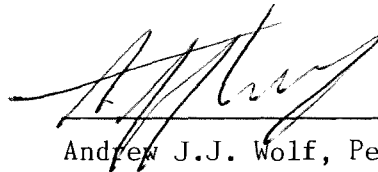
OBJECTION TO ORDER
Case No. CV PC 2010-1695

1 Likewise, the National Legal Aid and Defender articles and news articles are
2 inadmissible and irrelevant. Finally, the letters Wolf wrote to his trial counsel
3 this year and to the prosecutor are inadmissible hearsay, unless the Court finds
them to contain admissions, and are irrelevant to whether his counsel's
representation fell below an objective standard."

4 Id.

5 With respect to this objection, the district court has wrongly applied that
6 the above referenced exhibits are hearsay, when in fact it falls under "relevant
7 evidence", as defined under Rule 401, of the Idaho Rules of Evidence, and is
8 relevant and tangible evidence as applied under Rule 402, IRE. As to the National
9 Legal Aid Defender Associations Report and the Concern Forms and discussions that
10 Wolf had with Charles Fletcher, Dale Damron are all tangible evidence under Rule
11 402, IRE as well and fall under the hearsay exception rules as set forth under
12 Rule 803(8) and (24) for they are governmental documents and discussions with
13 government officials.

14 DATED June 24, 2010.

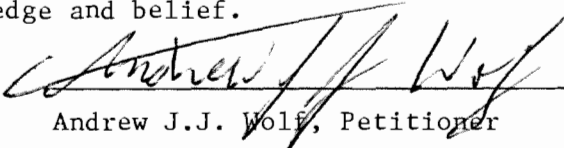


Andrew J.J. Wolf, Petitioner pro se

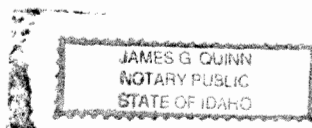
1 VERIFICATION

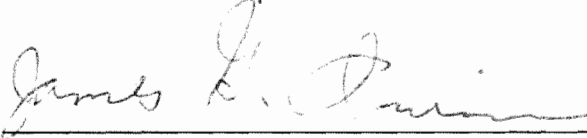
2 STATE OF IDAHO)
3) ss.
4 COUNTY OF ADA)

5 ANDREW J.J. WOLF, being sworn under oath deposes and says, that; the party
6 is the petitioner in the above-entitled matter, and, that all statements are true
7 and correct to the best of his knowledge and belief.

8 
Andrew J.J. Wolf, Petitioner

9 SUBSCRIBED, SWORN and AFFIRMED to before me this th 24 day of June ,
10 2010.



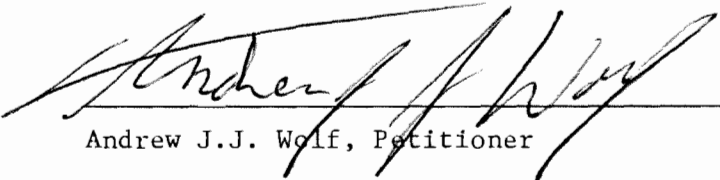
12 
Notary Public for Idaho

13 Commission expires: 9/10/13

14 CERTIFICATE OF MAILING

15 I HEREBY CERTIFY that on the 24 day of June , 2010, I mailed the
16 foregoing original to the Court for the purposes of filing with the Court and of
17 mailing a true and correct copy via the prison mail system for processing to the
18 U.S. Mail System to:

19 ADA COUNTY PROSECUTOR
20 200 W. Front St. Rm 3191
Boise, ID 83707

21 
22 Andrew J.J. Wolf, Petitioner
23
24
25

JUL 06 2010

J. DAVID NAVARRO, Clerk
By J. WEATHERBY
DEPUTYIN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ANDREW J. WOLF,

Petitioner,

vs.

THE STATE OF IDAHO,

Defendant.

Case No. CV-PC-2010-1695

ORDER DENYING MOTION

On January 29, 2010, the Petitioner, ANDREW J. WOLF, filed a Petition for Post Conviction Relief. He supported his Petition with an Affidavit and numerous exhibits. Wolf filed an Amended Petition for Post-Conviction Relief¹ on February 11, 2010. He supported the Amended Petition with the same Affidavit he filed on January 28, 2010. The State answered and moved to summarily dismiss his Amended Petition on March 11, 2010.

On March 23, 2010, the Court gave Wolf and the State notice of its intent to dismiss the Amended Petition summarily and gave both twenty (20) days to respond. Wolf moved for enlargement of time to respond seeking an additional thirty (30) days. The Court granted the Motion on March 29, 2010, and ordered any responses to be filed by May 3, 2010. On March 30, 2010, Wolf filed another supplemental motion for enlargement of time seeking additional time to respond with a date of May 12, 2010. The Court denied the Motion on April 5, 2010.

Wolf objected to the conditional order on April 8, 2010 and requested discovery. The Court denied the Motion for Discovery on April 13, 2010. On April 19, 2010, Wolf moved a third time for enlargement of time to respond to the Court's conditional order and the Court granted it in part. On April 20, 2010, the Court ordered any response be filed no later than June 2, 2010, and

¹ Where a complaint is amended, it takes the place of the original complaint. *Hollon v. State*, 132 Idaho 573, 576, 976 P.2d 927, 930 (1999); *Andrews v. Moore*, 14 Idaho 465, 94 P. 579 (1908).

1 indicated it would not grant any further extensions. In response, Wolf filed a motion entitled,
2 "Motion to Disqualify the Judge With [sic] Prejudice" under I.R.C.P. 40(d)(2). The Court denied
3 his Motion on June 8, 2010.

4 Wolf also filed the following documents: Second Affidavit of Petitioner Andrew J.J. Wolf
5 (302 pages); Third Affidavit of Petitioner Andrew J.J. Wolf (9 pages); Brief in Support of First
6 Amended Petition for Post Conviction Relief (49 pages); Motion to Take Judicial Notice of the
7 Underlying Criminal Case CR 1991-0002426 Nez Perce County (3 pages); Petitioners [sic]
8 Bificated [sic] Response and Objection to Respondents [sic] Motion for Summary Dismissal and
9 the Courts [sic] Order Summarily Dismissing Petition for Post-Conviction Relief.

10 In his First Amended Petition, he asserted his trial counsel were ineffective by failing to
11 properly investigate, failing to properly prepare for a preliminary hearing, failing to move to
12 suppress evidence, coercing a guilty plea, failing to object to the use of prior pre-sentence reports,
13 and failing to obtain copies of prior sentencing court transcripts. He further claimed his appellate
14 counsel was ineffective by "neglecting to pursue appellate review of every non-frivolous issue."

15 Wolf claimed the State failed to disclose "*Brady*"² material by failing to disclose the
16 Affidavit of Probable Cause and the Search Warrant executed on August 20, 2007. He did not
17 explain how that information would have affected his case. In the next claim against the State,
18 Wolf asserted that the State searched his residence August 20, 2007, *without a warrant* even
19 though in the previous paragraph he claimed the State violated *Brady* by failing to provide a copy.
20 Finally, he claimed, without identifying what evidence was withheld, the State committed a *Brady*
21 violation by failing to disclose "exculpatory" evidence. He also did not explain how this unknown
22 evidence would have changed the outcome. While he alluded to information regarding the use of
23 the social networking site, he did not explain how this is *Brady* material.

24 Finally, he claimed that his guilty plea was involuntary because "newly discovered
25 evidence which the petitioner at the time of his pleas were given he was suffering from Syphilis
26 which due to being irrational and not mentally competent not a voluntary, knowing or intelligent
pleas[sic]." He provided no evidence that even if he suffered from syphilis at the time he entered
his plea, it affected his ability to enter a plea.

² *Brady v. Maryland*, 373 U.S. 83 (1963).

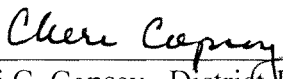
1 Having reviewed the First Amended Petition, Wolf's Affidavits, the additional material
2 filed by Wolf, the matters judicially noticed and the evidence in a light most favorable to Wolf, the
3 Court found that it is satisfied that Wolf is not entitled to post-conviction relief. I.C. §19-4906(2).
4 The Court further found there is no dispute of material fact and no purpose would be served by any
5 further proceedings. Therefore, by order, the Court dismissed Wolf's Amended Petition on June
6 10, 2010.

7 On June 28, 2010, Wolf filed a document entitled "Motion to Alter and Amend Order
8 Dismissing Petition" pursuant to I.R.C.P. 59(e). He also moved the Court to grant him an
9 evidentiary hearing. The Court denies that Motion on the basis that there are no disputed facts
10 material to the First Amended Petition.

11 I.R.C.P. 59(e) is designed to allow the trial court to correct errors of fact and law. In his
12 most recent Motion Wolf raises no new facts or legal argument relevant to the issues raised in his
13 First Amended Petition. It is simply a rehashed version of what he had filed before. Therefore,
14 the Court finds no basis to alter or amend the Order Dismissing Petition and denies his Motion.

15 **IT IS SO ORDERED.**

16 Dated this 6th day of July 2010.

17 
18 Cheri C. Copsey, District Judge

1 I, J. David Navarro, the undersigned authority, do hereby certify that on 6, July 2010, I
2 mailed, by United States Mail, one copy of the **ORDER DISMISSING PETITION** as notice
3 pursuant to Rule 77(d) I.C.R. to each of the attorneys of record in this cause in envelopes
4 addressed as follows:

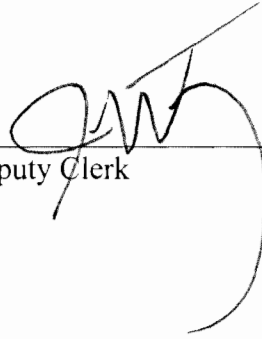
5 ADA COUNTY PROSECUTING ATTORNEY
6 INTER DEPT MAIL
7 GABE HAWS

8 ADA COUNTY PUBLIC DEFENDER
9 INTER DEPT MAIL
10 MIKE LOJEK

11 ANDREW J. WOLF
12 IDOC # 35408
13 ICC, P-20-A
14 P.O. BOX 70010
15 BOISE, IDAHO 83707

16 J. DAVID NAVARRO
17 Clerk of the District Court
18 Ada County, Idaho

19 Date: JUL 06 2010

20 By 
21 Deputy Clerk

RECEIVED
JUL 12 2010

JUL 12 2010
J. DAVID NAVARRO, Clerk
By BRADLEY J. THIES
DEPUTY

Andrew J.J. Wolf
#35408, ICC
Post Office Box 70010
Boise, Idaho 83707

Ada County Clerk

Petitioner-Appellant,

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ANDREW J.J. WOLF,	)	oOo
)	
Petitioner-Appellant,	)	Case No. CV-PC-2010-1695
)	
-vs-	)	NOTICE OF APPEAL
)	
STATE OF IDAHO,)	
)	
Respondent.)	
)	

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S
ATTORNEYS, STATE OF IDAHO, AND ADA COUNTY PROSECUTING ATTORNEY
AND THE CLERK OF THE ABOVE-NAMED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Petitioner, appeals against the State of Idaho to the Idaho Supreme Court from the District Court's Order Summarily Dismissing Petition for Post-Conviction Relief entered into the record on June 10, 2010, and the Order Denying Petitioner's Motion to Alter and Amend Order Summarily Dismissing Petition for Post-Conviction Relief entered into the record on the 6th day of July 2010, the Honorable Cheri C. Copsey, District Judge presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the Judgments described in paragraph one (1) above is appealable pursuant to I.A.R. 11(c) (1-10).
3. That the Petitioner requests the entire reporter's standard transcript as defined in Rule 25(c), I.A.R.
4. The petitioner also requests the preparation of the following additional portions of the transcript:
 - (a) From the underlying criminal case, Case No. M0711105, Ada County, the transcripts from the preliminary hearing conducted on September 24, 2007;

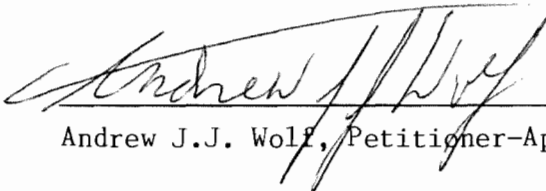
NOTICE OF APPEAL
Case No. CV-PC-2010-1695

- (b) Any and all hearings that took place in the post-conviction relief proceedings;
 - (c) Any and all hearings that may have took place on the Motion to Alter or Amend;
 - (d) The transcripts from Nez Nez Perce County Case No. CR 1991-0002426 dated March 4, 1992, August 24, 1992, December 9, 1992, and June 22, 1993;
 - (e) The transcripts from Nez Perce County Case No. CR 1996-0002864, sentencing hearing of March 26, 1997.
5. The Petitioner requests the standard clerk's record pursuant to I.A.R. 28(b)(2).
6. The Petitioner also requests the standard clerk's record pursuant to I.A.R. 28(b)(2) to include:
- (a) Any Briefs or Memeorandums, filed or lodged by the State, the Petitioner, or the Court in support of, or in opposistion to, the dismissal of the Post-Conviction Relief Petition;
 - (b) Any motions or responses, including all attachments, affidavits and their exhibits, or copies of transcripts, filed or lodged by the state, petitioner or the court in support of, or in opposition to, the dismissal of the Post-Conviction Relief Petition; and
 - (c) The Standard clerk's Record as set out in I.A.R. 28(b)(2), including but not limited to any Presentence Investigation Report and the Psychosexual Evaluation of the underlying criminal case H0701230 and H0701428.
7. I certify:
- (a) That a copy of this Notice of Appeal has been served on the reporter.
 - (b) That the Petitioner is exempt from paying the estimated transcript fee because he is indigent person and is unable to pay said fee.
 - (c) That the Petitioner is exempt from paying the estimated fee for the preparation of the record because he is an indigent person and is unable to pay said fee.
 - (d) That Petitioner is exempt from paying the appellate filing fee because he is indigent and is unable to pay said fee.
 - (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

8. That the Petitioner anticipates raising issues including, but not limited to:

- (a) Did the District Court in a prejudicial and bias manner exercise an abuse of discretion in dismissing the Petition for Post-Conviction Relief when its issues were contrary to, or involved an unreasonable application of clearly established Federal Law, as determined by the Supreme Court of the United States?
- (b) Did the District Court in a prejudicial and bias manner exercise an abuse of discretion in dismissing the Motion to Alter or Amend that was presetned for its consideration?
- (c) Did the District Court exercise an abuse of discretion in denying Wolf's Motion to Disqualify With Cause?
- (d) Did the District Court exercise an abuse of discretion when it denied taking judicial notice of certain transcripts from Wolf's prior convictions?
- (e) Did the District Court exercise an abuse of discretion when it failed to allow certain exhibits attached to Wolf's Affidavits to be allowed under the hearsay exception rules?
- (f) Did the District Court error in not finding Wolf's Appellate Counsel was ineffective?

DATED JULY 8, 2010.



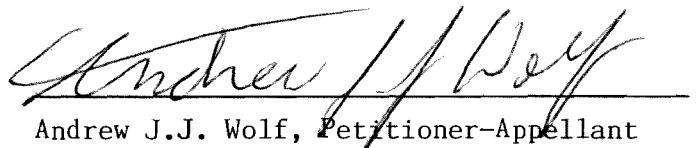
Andrew J.J. Wolf, Petitioner-Appellant

VERIFICATION

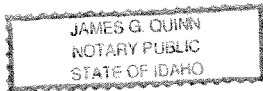
STATE OF IDAHO)
 : ss.
County of ADA)

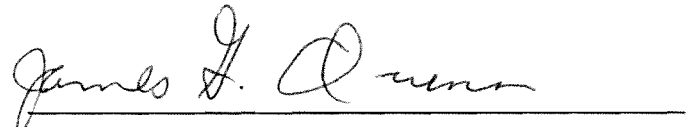
Andrew J.J. Wolf, being sworn, deposes and says:

That the party is the appellant in the above-entitled appeal and that all statements in this Notice of Appeal are true and correct to the best of his knowledge and belief.


Andrew J.J. Wolf, Petitioner-Appellant

SUBSCRIBED, SWORN and AFFIRMED to before me this 8th day of
July, 2010.




Notary Public for Idaho
Commission expires: 9/10/13

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on JULY 8, 2010, I mailed the original NOTICE OF APPEAL to the Court for the purposes of filing with the Court and a true and correct copy via prison mail system to the U.S. Mail postage prepaid to:

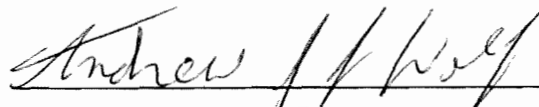
ADA COUNTY PROSECUTOR
200 W. Front St. Rm 3191
Boise, Idaho 83702-7300

ADA COUNTY COURT REPORTER
200 W. Front St.
Bosie, Idaho 83702-7300

NEZ PERCE COUNTY COURT REPORTER
P.O. Box 896
Lewiston, Idaho 83501

IDAHO SUPREME COURT CLERK
P.O. Box 83720
Boise, Idaho 83720-0101

DEPUTY ATTORNEY GENERAL
Criminal Division
P.O. Box 83720
Boise, Idaho 83720-0010



Andrew J.J. Wolf, Petitioner-Appellant

JUL 12 2010

J. DAVID NAVARRO, Clerk
By BRADLEY J. THIES
DEPUTY

RECEIVED
JUL 12 2010
Ada County Clerk

Inmate name Andrew J.J. Wolf
IDOC No. #35408, ICC
Address P.O. Box 70010
Boise, ID 83707

Petitioner - Appellant,

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ANDREW J.J. WOLF,)
)
) Petitioner,-)
)
) vs.)
)
) STATE OF IDAHO,)
)
) Respondent.)
)

Case No. CV-PC-2010-1695

**MOTION AND AFFIDAVIT IN
SUPPORT FOR
APPOINTMENT OF
COUNSEL**

COMES NOW, ANDREW J.J. WOLF, Petitioner in the above
entitled matter and moves this Honorable Court to grant Petitioner's Motion for Appointment of
Counsel for the reasons more fully set forth herein and in the Affidavit in Support of Motion for
Appointment of Counsel.

1. Petitioner is currently incarcerated within the Idaho Department of Corrections
under the direct care, custody and control of Warden Timothy Wengler,
of the Idaho Correctional Center, Boise, ID.

2. The issues to be presented in this case may become to complex for the Petitioner
to properly pursue. Petitioner lacks the knowledge and skill needed to represent him/herself.

3. Petitioner/Respondent required assistance completing these pleadings, as he/she
was unable to do it him/herself.

MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL - 1

Revised: 10/13/05

00702

4. Other: Requests appointment of the State-Appellate Public Defender

DATED this 8th day of July, 20 10.

Andrew J.J. Wolf
Petitioner

AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL

STATE OF IDAHO)
) ss
County of Ada)

Andrew J.J. Wolf, after first being duly sworn upon his/her oath, deposes
and says as follows:

1. I am the Affiant in the above-entitled case;
2. I am currently residing at the Idaho Correctional Center,
under the care, custody and control of Warden Timothy Wengler;
3. I am indigent and do not have any funds to hire private counsel;
4. I am without bank accounts, stocks, bonds, real estate or any other form of real
property;
5. I am unable to provide any other form of security;
6. I am untrained in the law;
7. If I am forced to proceed without counsel being appointed I will be unfairly
handicapped in competing with trained and competent counsel of the State;

Further your affiant sayeth naught.

WHEREFORE, Petitioner respectfully prays that this Honorable Court issue
it's Order granting Petitioner's Motion for Appointment of Counsel to represent his/her interest,
or in the alternative grant any such relief to which it may appear the Petitioner is entitled to.

DATED This 8th day of July, 2010.

Andrew J. Wolf
Petitioner

SUBSCRIBED AND SWORN AND AFFIRMED to before me this 8th day
of July, 2010.

(SEAL)

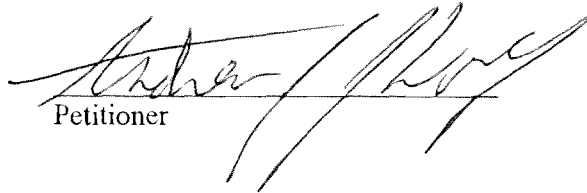


James G. Quinn
Notary Public for Idaho
Commission expires: 9/10/13

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 8 day of July, 2010, I mailed a copy of this MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL for the purposes of filing with the court and of mailing a true and correct copy via prison mail system for processing to the U.S. mail system to:

Ada County Prosecuting Attorney
200 W. Front St. Rm 3191
Boise, ID 83702-7300


Petitioner

RECEIVED
JUL 12 2010
Ada County Clerk

NO. _____ FILED
A.M. 8:00 P.M. _____

JUL 12 2010

J. DAVID NAVARRO, Clerk
By BRADLEY J. THIES
DEPUTY

Andrew J.J. Wolf
Full Name of Party Filing This Document
#35408, ICC
Mailing Address (Street or Post Office Box)
P.O. Box 70010
City, State and Zip Code
Boise, Idaho 83707
Telephone Number _____

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ANDREW J.J. WOLF,
Petitioner,
vs.
STATE OF IDAHO,
Respondent.

Case No.: CV-PC-2010-1695

MOTION AND AFFIDAVIT FOR
PERMISSION TO PROCEED ON PARTIAL
PAYMENT OF COURT FEES (PRISONER)

IMPORTANT NOTICE: *Idaho Code § 31-3220A requires that you serve upon counsel for the county sheriff, the department of correction or the private correctional facility, whichever may apply, a copy of this motion and affidavit and any other documents filed in connection with this request. You must file proof of such service with the court when you file this document.*

STATE OF IDAHO)
County of Ada) ss.

The Petitioner asks to start or defend this case on partial payment of court fees, and swears under oath

1. This is an action for (type of case) Appeal of Post-Conviction Relief. I believe I'm entitled to get what I am asking for.

MOTION AND AFFIDAVIT FOR PERMISSION TO
PROCEED ON PARTIAL PAYMENT OF COURT FEES
(PRISONER)
CAO 1-10C 2/25/2005

PAGE 1

00706

2. ☒ I have not previously brought this claim against the same party or a claim based on the same operative facts in any state or federal court. ☐ I have filed this claim against the same party or a claim based on the same operative facts in a state or federal court.

3. I am unable to pay all the court costs now. I have attached to this affidavit a current statement of my inmate account, certified by a custodian of inmate accounts, that reflects the activity of the account over my period of incarceration or for the last twelve (12) months, whichever is less.

4. I understand I will be required to pay an initial partial filing fee in the amount of 20% of the greater of: (a) the average monthly deposits to my inmate account or (b) the average monthly balance in my inmate account for the last six (6) months. I also understand that I must pay the remainder of the filing fee by making monthly payments of 20% of the preceding month's income in my inmate account until the fee is paid in full.

5. I verify that the statements made in this affidavit are true. I understand that a false statement in this affidavit is perjury and I could be sent to prison for an additional fourteen (14) years.

Do not leave any items blank. If any item does not apply, write "N/A". Attach additional pages if more space is needed for any response.

IDENTIFICATION AND RESIDENCE:

Name: Andrew J.J. Wolf Other name(s) I have used: _____

Address: #35408, ICC, P.O. Box 70010, Boise, ID 83707

How long at that address? 2 years 3 months Phone: _____

Date and place of birth: [REDACTED], Spokane Washington

DEPENDENTS:

I am ☒ single ☐ married. If married, you must provide the following information:

Name of spouse: _____

My other dependents (including minor children) are: Breanna J. Gardner Daughter

INCOME:

Amount of my income: \$ 0 per [] week [] month

Other than my inmate account I have outside money from: Family and Friends at times

My spouse's income: \$ N/A per [] week [] month.

ASSETS:

List all real property (land and buildings) owned or being purchased by you.

Your Address	City	State	Legal Description	Value	Equity
--------------	------	-------	-------------------	-------	--------

N/A

List all other property owned by you and state its value.

Description (provide description for each item)

Value

Cash Inmate Trust Account

\$ - 88.86

Notes and Receivables

N/A

Vehicles:

Bank/Credit Union/Savings/Checking Accounts

Stocks/Bonds/Investments/Certificates of Deposit

Trust Funds

Retirement Accounts/IRAs/401(k)s

Cash Value Insurance

Motorcycles/Boats/RVs/Snowmobiles:

Furniture/Appliances

Jewelry/Antiques/Collectibles

N/A

Description (provide description for each item)

Value

TVs/Stereos/Computers/Electronics

N/A

Tools/Equipment

Sporting Goods/Guns

Horses/Livestock/Tack

Other (describe)

N/A

EXPENSES: List all of your monthly expenses.

Expense

**Average
Monthly Payment**

Rent/House Payment

N/A

Vehicle Payment(s)

N/A

Credit Cards: (list each account number)

N/A

Loans: (name of lender and reason for loan)

N/A

Electricity/Natural Gas

N/A

Water/Sewer/Trash

Phone

Groceries

Clothing

Auto Fuel

Auto Maintenance

Cosmetics/Haircuts/Salons

Entertainment/Books/Magazines

Home Insurance

N/A

MOTION AND AFFIDAVIT FOR PERMISSION TO
PROCEED ON PARTIAL PAYMENT OF COURT FEES
(PRISONER)

CAO 1-10C 2/25/2005

PAGE 4

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Expense	Average Monthly Payment
Auto Insurance	<u>N/A</u>
Life Insurance	
Medical Insurance	
Medical Expense	|
Other	<u>N/A</u>

MISCELLANEOUS:

How much can you borrow? \$ 0 From whom? _____
 When did you file your last income tax return? _____ Amount of refund: \$ _____

PERSONAL REFERENCES: (These persons must be able to verify information provided)

Name	Address	Phone	Years Known
Chris Maxson,	3773 N. Petty Way,	Mreidian ID	571-6029 25
Stan Wolf,	2915 Meadowlark Dr.	Lewiston ID	743-0788 46

Andrew J. Wolf
 Signature

Andrew J.J. Wolf

Typed or Printed Name

20 10 SUBSCRIBED AND SWORN TO before me this 8th day of July



James G. Quinn
 Notary Public for Idaho
 Residing at _____
 My Commission expires 9/10/13

= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 07/08/2010 =

Doc No: 35408 Name: WOLF, ANDREW JOHN JOSEPH
Account: CHK Status: INDIGENT

ICC/UNIT J PRES FACIL
TIER-0 CELL-11

Transaction Dates: 07/08/2009-07/08/2010

Beginning Balance 32.32	Total Charges 394.32	Total Payments 273.14	Current Balance 88.86DB
-------------------------------	----------------------------	-----------------------------	-------------------------------

===== TRANSACTIONS =====					
Date	Batch	Description	Ref Doc	Amount	Balance
07/08/2009	HQ0464484-003	022-PHONE TIME	50906	6.80DB	25.52
07/08/2009	IC0464615-010	070-PHOTO COPY	60504	0.70DB	24.82
07/09/2009	HQ0464622-004	011-RCPT MO/CC	246218	100.00	124.82
07/13/2009	IC0465090-006	070-PHOTO COPY	49543	0.80DB	124.02
07/13/2009	IC0465090-007	070-PHOTO COPY	65745	3.70DB	120.32
07/14/2009	IC0465098-111	099-COMM SPL		73.88DB	46.44
07/15/2009	HQ0465351-017	022-PHONE TIME	65742	17.00DB	29.44
07/16/2009	IC0465526-003	070-PHOTO COPY	67545	1.90DB	27.54
07/16/2009	IC0465526-012	070-PHOTO COPY	65723	1.50DB	26.04
07/16/2009	IC0465526-020	070-PHOTO COPY	67533	1.40DB	24.64
07/21/2009	IC0465768-102	099-COMM SPL		4.12DB	20.52
07/27/2009	IC0466458-012	070-PHOTO COPY	67512	3.60DB	16.92
07/27/2009	IC0466458-020	070-PHOTO COPY	67360	1.70DB	15.22
07/28/2009	IC0466669-013	070-PHOTO COPY	67393	1.70DB	13.52
08/04/2009	IC0467278-120	099-COMM SPL		13.14DB	0.38
08/04/2009	HQ0467307-001	011-RCPT MO/CC	748014	50.00	50.38
08/05/2009	HQ0467580-025	022-PHONE TIME	65741	10.20DB	40.18
08/06/2009	IC0467972-007	078-MET MAIL	51124	11.20DB	28.98
08/06/2009	IC0467972-013	078-MET MAIL	68672	1.39DB	27.59
08/07/2009	IC0468119-004	070-PHOTO COPY	68681	0.80DB	26.79
08/11/2009	IC0468307-005	100-CR INM CMM		13.14	39.93
08/18/2009	IC0468914-114	099-COMM SPL		6.45DB	33.48
08/25/2009	IC0469557-091	099-COMM SPL		15.00DB	18.48
08/26/2009	IC0469788-019	071-MED CO-PAY	12121	4.00DB	14.48
08/26/2009	IC0469813-025	078-MET MAIL	72019	1.22DB	13.26
08/26/2009	IC0469820-022	078-MET MAIL	68582	0.17DB	13.09
08/27/2009	IC0469911-014	070-PHOTO COPY	68579	0.20DB	12.89
08/27/2009	IC0469911-015	070-PHOTO COPY	68575	0.60DB	12.29
08/27/2009	IC0469911-018	070-PHOTO COPY	68560	2.00DB	10.29
08/27/2009	IC0469914-001	070-PHOTO COPY	57917	1.40DB	8.89
08/27/2009	IC0469914-002	070-PHOTO COPY	68593	2.50DB	6.39
08/27/2009	IC0469914-003	070-PHOTO COPY	68682	1.40DB	4.99
08/27/2009	IC0469951-008	078-MET MAIL	68673	1.73DB	3.26
09/01/2009	IC0470265-100	099-COMM SPL		3.00DB	0.26
09/02/2009	IC0470629-003	070-PHOTO COPY	72573	8.30DB	8.04DB
09/03/2009	IC0470832-013	070-PHOTO COPY	72021	0.60DB	8.64DB
09/24/2009	IC0473200-002	070-PHOTO COPY	72545	2.70DB	11.34DB
09/24/2009	IC0473200-006	070-PHOTO COPY	61704	0.80DB	12.14DB
12/22/2009	HQ0483440-014	011-RCPT MO/CC	764933	25.00	12.86

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= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 07/08/2010 =

Doc No: 35408 Name: WOLF, ANDREW JOHN JOSEPH
Account: CHK Status: INDIGENT

ICC/UNIT J PRES FACIL
TIER-0 CELL-11

Transaction Dates: 07/08/2009-07/08/2010

Beginning
Balance
32.32

Total
Charges
394.32

Total
Payments
273.14

Current
Balance
88.86DB

===== TRANSACTIONS =====					
Date	Batch	Description	Ref Doc	Amount	Balance
12/29/2009	IC0483957-105	099-COMM SPL		4.86DB	8.00
12/30/2009	HQ0484187-023	022-PHONE TIME	76972	3.40DB	4.60
01/05/2010	IC0484893-016	078-MET MAIL	76086	0.17DB	4.43
01/05/2010	IC0484895-016	070-PHOTO COPY	81616	5.40DB	0.97DB
01/05/2010	IC0484895-024	070-PHOTO COPY	84549	3.00DB	3.97DB
01/11/2010	IC0485592-006	070-PHOTO COPY	84254	7.40DB	11.37DB
01/14/2010	IC0486042-002	070-PHOTO COPY	82500	0.60DB	11.97DB
01/22/2010	IC0486767-006	070-PHOTO COPY	89424	1.00DB	12.97DB
01/25/2010	IC0487002-001	071-MED CO-PAY	21974	5.00DB	17.97DB
01/26/2010	IC0487212-002	078-MET MAIL	84548	9.80DB	27.77DB
01/26/2010	IC0487216-011	071-MED CO-PAY	19827	2.00DB	29.77DB
03/01/2010	HQ0490826-003	011-RCPT MO/CC	652029	40.00	10.23
03/01/2010	IC0490901-011	078-MET MAIL	85981	4.99DB	5.24
03/01/2010	IC0490909-021	071-MED CO-PAY	23686	7.00DB	1.76DB
03/04/2010	IC0491436-017	078-MET MAIL	90202	1.56DB	3.32DB
03/09/2010	IC0491941-025	078-MET MAIL	90235	0.61DB	3.93DB
03/09/2010	IC0491945-017	070-PHOTO COPY	90244	0.90DB	4.83DB
03/09/2010	IC0491945-023	070-PHOTO COPY	89915	4.40DB	9.23DB
03/09/2010	IC0491947-001	070-PHOTO COPY	90203	2.10DB	11.33DB
03/12/2010	IC0492324-004	070-PHOTO COPY	90229	1.40DB	12.73DB
03/12/2010	IC0492324-007	070-PHOTO COPY	90228	2.90DB	15.63DB
03/17/2010	IC0492879-005	078-MET MAIL	91178	2.00DB	17.63DB
03/18/2010	IC0493024-024	070-PHOTO COPY	77561	1.00DB	18.63DB
03/18/2010	IC0493024-025	070-PHOTO COPY	77555	9.40DB	28.03DB
03/18/2010	IC0493030-008	071-MED CO-PAY	21935	2.00DB	30.03DB
03/24/2010	IC0493563-022	078-MET MAIL	91152	2.44DB	32.47DB
03/24/2010	IC0493564-009	070-PHOTO COPY	95752	0.60DB	33.07DB
03/24/2010	IC0493564-014	070-PHOTO COPY	91151	2.60DB	35.67DB
03/25/2010	IC0493726-002	070-PHOTO COPY	91080	0.40DB	36.07DB
04/09/2010	HQ0495353-003	011-RCPT MO/CC	412688	25.00	11.07DB
05/14/2010	HQ0499951-018	011-RCPT MO/CC	312473	20.00	8.93
05/18/2010	IC0500232-109	099-COMM SPL		8.79DB	0.14
05/21/2010	IC0500588-001	070-PHOTO COPY	52315	2.20DB	2.06DB
05/21/2010	IC0500588-002	070-PHOTO COPY	52313	2.20DB	4.26DB
05/21/2010	IC0500588-007	070-PHOTO COPY	52309	0.30DB	4.56DB
05/21/2010	IC0500588-008	070-PHOTO COPY	95797	2.90DB	7.46DB
05/21/2010	IC0500589-008	078-MET MAIL	52316	1.22DB	8.68DB
05/21/2010	IC0500597-002	078-MET MAIL	52310	0.44DB	9.12DB
05/24/2010	IC0500729-009	071-MED CO-PAY	27573	3.00DB	12.12DB

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= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 07/08/2010 =

Doc No: 35408 Name: WOLF, ANDREW JOHN JOSEPH
Account: CHK Status: INDIGENT

ICC/UNIT J PRES FACIL
TIER-0 CELL-11

Transaction Dates: 07/08/2009-07/08/2010

Beginning Balance	Total Charges	Total Payments	Current Balance
32.32	394.32	273.14	88.86DB

===== TRANSACTIONS =====					
Date	Batch	Description	Ref Doc	Amount	Balance
05/24/2010	IC0500784-016	078-MET MAIL	96800	1.22DB	13.34DB
05/27/2010	IC0501235-014	070-PHOTO COPY	103066	3.20DB	16.54DB
06/03/2010	IC0501998-004	070-PHOTO COPY	95798	16.80DB	33.34DB
06/03/2010	IC0501998-010	070-PHOTO COPY	103067	2.40DB	35.74DB
06/04/2010	IC0502142-025	078-MET MAIL	101887	10.80DB	46.54DB
06/04/2010	IC0502151-002	070-PHOTO COPY	101888	17.40DB	63.94DB
06/08/2010	IC0502669-010	078-MET MAIL	103069	3.40DB	67.34DB
06/10/2010	IC0503133-009	070-PHOTO COPY	96801	3.90DB	71.24DB
06/10/2010	IC0503133-014	070-PHOTO COPY	91810	1.10DB	72.34DB
06/11/2010	IC0503141-012	070-PHOTO COPY	101197	15.30DB	87.64DB
06/17/2010	IC0503893-012	078-MET MAIL	101196	1.22DB	88.86DB

STATE OF IDAHO

Idaho Department of Correction

I hereby certify that the foregoing is a full, true, and
correct copy of an instrument as the same now remains
on file and of record in my office.

WITNESS my hand hereto affixed this 8TH

day of July A.D., 2010

By [Signature]

00713

RECEIVED
JUL 12 2010

Ada County Clerk

JUL 15 2010

J. DAVID NAVARRO, Clerk
By J. WEATHERBY
DEPUTY

Andrew J.J. Wolf
#35408, ICC
Post Office Box 70010
Boise, Idaho 83707

Petitioner-Appellant,

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

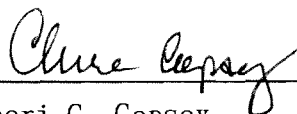
ANDREW J.J. WOLF,)	
	)	Case No. CV-PC-2010-1695
Petitioner-Appellant,)	
	)	ORDER APPOINTING STATE
-vs-	)	APPELLATE PUBLIC DEFENDER
	)	ON POST-CONVICTION RELIEF
STATE OF IDAHO,)	
)	
Respondent.)	

The above-named Petitioner, ANDREW J.J. WOLF, being indigent, and said
Petitioner having elected to pursue an appeal in the above-entitled matter;

IT IS HEREBY ORDERED, AND THIS COURT DOES ORDER, that the Idaho State
Appellate Public Defender is appointed to represent the above-named

Petitioner, ANDREW J.J. WOLF, in all matters pertaining to the Appeal.

Dated this 13th day of July, 2010.


Cheri C. Copsey
District Judge

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ANDREW J. J. WOLF,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 37863

CERTIFICATE OF EXHIBITS

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the
State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the
course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said
Court this 23rd day of August, 2010.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE OF EXHIBITS

00715

In the Supreme Court of the State of Idaho

ANDREW J. J. WOLF,)	
	)	ORDER GRANTING MOTION TO
Petitioner-Appellant,	)	AUGMENT THE APPELLATE
	)	RECORD
v.)	
	)	Supreme Court Docket No. 37863-2010
STATE OF IDAHO,	)	Ada County Docket No. 2010-1695
)	
Respondent.)	

A MOTION TO AUGMENT THE APPELLATE RECORD and an AFFIDAVIT IN SUPPORT OF MOTION TO AUGMENT THE APPELLATE RECORD were filed by counsel for Appellant on October 4, 2010. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT be, and hereby is, GRANTED and the transcripts listed below shall be augmented into this appeal.

1. Transcript of the Plea hearing conducted on December 12, 2007 from the underlying case, *State v. Wolf*, docket numbers 35147 and 35148 which was prepared and filed on June 20, 2008; and
2. Transcript of the Sentencing hearing conducted on February 20, 2008 from the underlying case, *State v. Wolf*, docket numbers 35147 and 35148 which was prepared and filed on June 30, 2008.

IT FURTHER IS ORDERED that the District Court Clerk shall submit to this Court, within seven (7) days of the date of this order, the item listed below as a CONFIDENTIAL EXHIBIT, an item which was NOT submitted with this Motion, and not contained in this record on appeal:

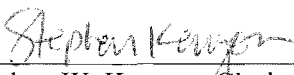
1. Presentence Investigation Report which was prepared and filed on June 30, 2008 in the underlying case, *State v. Wolf*, docket numbers 35147 and 35148. (Ada County case number H0701230).

IT FURTHER IS ORDERED that Appellant's MOTION TO SUSPEND THE BRIEFING SCHEDULE be, and hereby is, DENIED, and the due date for the filing of Respondent's Brief shall remain as previously set for November 26, 2010.

ORDER GRANTING MOTION TO AUGMENT THE APPELLATE RECORD – Docket No. 37863-2010

DATED this 16th day of November, 2010.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter

ORDER GRANTING MOTION TO AUGMENT THE APPELLATE RECORD – Docket No.
37863-2010

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ANDREW J. J. WOLF,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 37863

CERTIFICATE OF SERVICE

I, J. DAVID NAVARRO, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD

to each of the Attorneys of Record in this cause as follows:

DENNIS A. BENJAMIN

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

J. DAVID NAVARRO
Clerk of the District Court

Date of Service: AUG 24 2010

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE OF SERVICE

00716

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ANDREW J. J. WOLF,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 37863

CERTIFICATE TO RECORD

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 12th day of July, 2010.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE TO RECORD



00717